No. 310

JOINT APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,597

ALABAMA MILLS, INC., ET AL., *Appellants*,

v.

JAMES P. MITCHELL, *Secretary of Labor, et al., Appellees.*

Appeal from a Judgment of the United States District Court for the District of Columbia

United States Court of Appeals
for the
District of Columbia Circuit
DEC 17 1956
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,597

ALABAMA MILLS, INC., ET AL., *Appellants*,

v.

JAMES P. MITCHELL, *Secretary of Labor, et al., Appellees.*

Appeal from a Judgment of the United States District Court for the District of Columbia

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JOINT APPENDIX

PART I—DOCUMENTS PERTINENT TO COVINGTON MILLS, ET AL., v. MITCHELL

286 (Filed January 19, 1953)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

1. COVINGTON MILLS,
Covington, Georgia,
2. CROWN COTTON MILLS,
Dalton, Georgia,
3. FASTEX, INC.,
Cedartown, Georgia,
4. FULTON BAG AND COTTON MILLS,
P.O. Box 1726,
Atlanta 1, Georgia,
5. JORDON MILLS, INC.,
Columbus, Georgia,
6. MANDEVILLE MILLS,
Carrollton, Georgia,
7. MARY-LEILA COTTON MILLS, INC.,
Greensboro, Georgia,
8. MOULTRIE COTTON MILLS,
Moultrie, Georgia,
9. NEWNAN COTTON MILLS,
Newnan, Georgia,
10. UNION MANUFACTURING COMPANY,
Union Point, Georgia,

Plaintiffs.

vs.

MAURICE J. TOBIN, Secretary of Labor, Department of Labor, Constitution Avenue at 14th Street, N. W., Washington, D. C.

Defendant.

Civil Action No. 259-53

Complaint for Declaratory Judgment And Injunctive Relief

Come now the plaintiffs, COVINGTON MILLS, CROWN COTTON MILLS, FASTEX, INC., FULTON BAG AND COTTON MILLS, JORDON MILLS, INC., MANDEVILLE MILLS, MARY LEILA COTTON MILLS, INC., MOULTRIE COTTON MILLS, NEWNAN COTTON MILLS and UNION MANUFACTURING COMPANY, and present this
287 complaint for declaratory judgment and injunctive relief, and show this Honorable Court as follows:

I.

This complaint seeks a declaration by this Honorable Court that a decision (attached hereto and made part hereof, marked "Exhibit A") of the defendant, Maurice J. Tobin, Secretary of Labor, issued January 15, 1953, which purports to determine the prevailing minimum wages for persons employed in the textile industry under the Walsh-Healey Public Contracts Act (49 Stat. 2036-2239, as amended, 41 U.S.C. Sections 35-45), is contrary to law, invalid and of no force and effect; and this complaint further seeks injunctive relief to prevent said decision and said purported determination from becoming effective. This complaint further seeks judicial review of an order (attached hereto and made part hereof, marked "Exhibit B") of the defendant issued January 12, 1953, denying requests duly made on behalf of these plaintiffs for further hearing and oral argument in the proceeding out of which the purported determination arose, and this complaint seeks a declaration by this Honorable Court that such denial of further hearing and oral argument was unlawful and contrary to the requirements of the Walsh-Healey Act and the Administrative Procedure Act (60 Stat. 237, as amended, 5 U.S.C. Sections 1001-1011).

II.

This complaint is filed pursuant to Section 10 of the Walsh-Healey Act as amended by Public Law 429, Chapter 530, Section 301, 82d Cong., 2nd Sess. June 30, 1952, 41 U.S.C., Section 43a, which provides for judicial review of

any wage determination by the Secretary of Labor under said Act in the manner provided by Section 10 of the Administrative Procedure Act "by any person adversely affected or aggrieved thereby, who shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or
288 to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable." These plaintiffs are manufacturers of cotton textile materials, supplies, and articles which are purchased or to be purchased by the Government, and these plaintiffs are in the industry to which the purported wage determination herein complained of is applicable. Therefore, pursuant to Section 10 of the Walsh-Healey Act, these plaintiffs are entitled to judicial review of said decision and purported wage determination, and of said order denying further hearing and oral argument, and such judicial review is available pursuant to Section 10 of the Administrative Procedure Act (5 U.S.C. Section 1009).

III.

The decision of the defendant herein complained of is the culmination of a proceeding instituted by a notice published on July 26, 1952 (17 F. R. 6871). The notice advised interested persons of the time and place at which they could appear and offer testimony as to what are the "prevailing minimum wages in the Textile Industry" and as to other matters such as the proper definition of the industry and the propriety of subminimum wage rates for learners. Hearing was held September 3-5, 1952. These plaintiffs were parties of record and participated actively in said hearing. On December 5, 1952, the defendant issued a "notice of Proposed Amendment to the Determination of the Prevailing Minimum Wage for the Textile Industry" (attached hereto and made part hereof, marked "Exhibit C"), setting forth a tentative determination that the prevailing minimum wage for persons employed in the "Cotton, Silk, and Synthetic Textile Branch of the Textile Industry" in

the performance of contracts subject to the Walsh-Healey Act "shall be $1.00 an hour arrived at either on a time or piece-rate basis"; and that the minimum wage for
289 persons employed in other branches of the textile industry subject to the Walsh-Healey Act "shall be 87 cents an hour"; and that the rate for learners in the "Cotton, Silk and Synthetic Textile Branch" shall be 92 cents an hour, and the rate in other branches of the textile industry shall be 80 cents an hour. Exceptions were duly filed by these plaintiffs within the time specified by the defendant; and said exceptions set forth with respect to the proposed decision all of the objections which are made herein with respect to the final decision of the defendant and with respect to the conduct of the proceeding which resulted in said decision. Notwithstanding the objections set forth in said exceptions and in the exceptions filed on behalf of other parties to the proceeding, the defendant proceeded to issue the final decision and order herein complained of.

IV.

The defendant's decision and order herein complained of are not in accordance with law, and were made without observance of procedure required by law, in the following respects:

V.

The decision complained of purports to determine a nation-wide minimum wage for the cotton textile industry, which determination is a plain violation of the requirement of the Walsh-Healey Act that a separate determination must be made for each "locality". Section 1 (b) of the Walsh-Healey Act authorizes the Secretary of Labor to determine what are the "prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating *in the locality* in which the materials, supplies, articles, or equipment are to be manufactured or furnished" under a contract with the Government which is subject to that Act

(underscoring added). The United States Court of Appeals for the District of Columbia held in *Lukens Steel Co. v. Perkins*, 107 F. (2d) 627 (App. D. C. 1939), *reversed on other grounds*, 310 U. S. 113 (1940), that the determinations of the Secretary of Labor must be on the basis of small geographical units, and cannot even be based on large regions or areas within the United States—much less on the United States as a whole, as has been attempted in the defendant's decision.

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VI.

The defendant has based his determination on material facts or alleged facts not appearing in the evidence in the record, and as to which the plaintiffs have been denied the opportunity to show the contrary, such opportunity having been requested in the Motion for Further Hearing which the defendant denied.

VII.

The defendant failed to rule upon the "open market" exemption provided by Section 9 of the Walsh-Healey Act, although he was repeatedly requested by these plaintiffs and other parties to rule on that exemption.

VIII.

The defendant's decision is unsupported by substantial evidence on the basis of the whole record.

IX.

The notice pursuant to which the hearings were held was inadequate to inform the plaintiffs as to the issues of the proceeding.

X.

The defendant did not separately state and currently publish the rules of procedure under which the proceedings were to be conducted, but published such procedural rules as purported to apply to the proceeding on August 30, 1952—only one business day before the hearing began.

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XI.

The defendant failed and repeatedly refused to investigate or otherwise consider evidence as to personal bias or disqualification of officers participating in the proceeding and in the decisions arising therefrom, and failed and refused to determine the question of bias alleged in a timely and sufficient affidavit of personal bias or disqualification, presented under date of October 27, 1952, despite the fact that said affidavit set forth reasonable grounds for believing that the defendant and other officials of the Department of Labor might be biased and prejudiced with respect to the issues of this proceeding. The defendant further failed to find, as required by the undisputed matters set forth in said affidavit, that the defendant and other officers who participated in the decision were and are biased and therefore disqualified.

XII.

The defendant erred in failing to grant the further hearing requested by these plaintiffs and others, as the defendant relied on extra-legal materials outside the record, which were not subjected to cross-examination or rebuttal and could not be properly analyzed, tested or rebutted without further hearing and adequate time and preparation prior to hearing. Moreover, the failure to grant further hearing was erroneous and unlawful in view of the failure of the defendant to give adequate notice as to the issues of the proceeding with respect to the definition of "locality", the definition of various jobs to be used as a basis for the proposed wage determination, and the manner in which the defendant proposed to determine minimum wages; etc.; and further hearing was required for the additional reason that the defendant had erroneously refused to receive and consider evidence as to bias and disqualification of officers participating in the decision.

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XIII.

The defendant erred in denying the exceptions filed by plaintiffs and other parties and in affirming his proposed decision with only minor modification.

XIV.

If defendant's decision and purported determination were permitted to become effective in accordance with their terms, plaintiffs and others similarly situated would be irreparably injured, as Government contracting agencies would require the inclusion of the $1.00 minimum rate in contracts for textiles produced by plaintiffs and others, and would deny contracts to those refusing to include said $1.00 rate; and the ultimate decision of this Court holding the defendant's purported determination of the $1.00 minimum rate to be unlawful could not remedy the great harm which plaintiffs and others similarly situated would have suffered by that time. Therefore, it is essential that the status quo be maintained by a stay or injunction *pendente lite* issued by this Court, preventing the effectiveness of the defendant's purported determination.

Wherefore, plaintiffs pray:

1. That this Court direct the defendant to transmit to this Court the entire record of the proceeding out of which the decision and order complained of arose, in order that said record may be reviewed and said decision and order may be acted upon by this Court;

2. That the defendant's decision, order and purported determination be declared unlawful and set aside;

3. That the defendant be permanently restrained and enjoined from enforcing said decision and determination and from taking any action toward placing the same in effect;

4. That all persons having notice of the restraining orders prayed for herein be restrained from placing or attempting

to place the provisions of said decision and determination in effect;

293 5. That pending full consideration by this Honorable Court of the matters involved in this proceeding, the effective date of the defendant's purported determination be stayed indefinitely in order to preserve the status quo and to prevent irreparable injury to these plaintiffs; and

6. That the Court grant such other, further and different relief as the Court may deem proper under all the circumstances.

Respectfully submitted,

GAMBRELL, HARLAN, BARWICK, RUSSELL & SMITH

(Signed) W. Glen Harlan, 825 Citizens & Southern National Bank Building, Atlanta 3, Georgia.

(Signed) McKenney Flannery & Craighill, by (signed) Llewellyn C. Thomas, Hibbs Building, Washington, D. C.

January 19, 1953. *Attorneys for Plaintiffs*

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294 1/22/53 PCD—36

Exhibit A

United States Department of Labor

Title 41—Public Contracts

Part 202—Minimum Wage Determinations

(Filed Jan. 19, 1953)

NOTICE OF AMENDMENT TO THE DETERMINATION OF THE PREVAILING MINIMUM WAGE FOR THE TEXTILE INDUSTRY.

On December 11, 1952 notice was published in the Federal Register of a proposed decision of the Secretary of Labor in regard to the determination of the prevailing minimum

wage for the Textile Industry (17 F.R. 11197). The notice allowed a period of fifteen days in which interested parties might submit exceptions to the proposed decision or any data intended either in rebuttal or in support of certain material and data received as part of the record following the close of the hearing in this matter. The time for filing exceptions and other material was subsequently extended for an additional fifteen days to January 10, 1953.

Exceptions and objections to the proposed determination have been received from the American Cotton Manufacturers Institute, the National Association of Cotton Manufacturers, the National Association of Wool Manufacturers, the Textile Workers Union of America, and Attorney James L. Rankin on behalf of thirty-four textile companies and Attorney W. Glen Harlan on behalf of thirty-seven cotton textile mills.

In addition to the filing of objections Attorney James L. Rankin and Attorney W. Glen Harlan filed petitions for rehearing and oral argument in order to permit examination of witnesses in regard to certain statistical material received as part of the record following the close of the hearing. These motions were disposed of by an order which I issued in this matter, on January 12, 1953 and addressed to the interested parties. It was indicated in such order that the supplementary statistical data received in the record following the close of the hearing was for the purpose of clarification and elaboration of the basic record material and did not in itself constitute new basic evidence, and that no necessity was shown for the reopening of the hearing.

The exceptions submitted by the American Cotton Manufacturers Institute and Attorneys Rankin and Harlan were directed primarily toward the proposal to establish a single minimum wage for the Industry, and also as to the finding that the wage data in the record supports an industry-wide minimum wage of $1.00 an hour. Objection was also made to the proposed wage of 92 cents an hour for learners. The Textile Workers Union of America objected to the proposed

$1.00 an hour rate on the ground that such rate is too low to have any substantial effect upon the Industry.

The matters raised in these various objections were matters which were considered by me in great detail in arriving at the proposed decision. I have carefully considered these various exceptions and the arguments presented in support thereof and find nothing therein which would require me to modify my proposed decision.

In their submissions the National Association of Cotton Manufacturers and the Textile Workers Union of America have urged that certain additional products be added to the Cotton, Silk and Synthetic Textile Branch of the Textile

(WH53-751)

295 Industry. These proposals and the supporting material have been examined in the light of the whole record and I have come to the conclusion that woven bedspreads, blankets, diapers and dishcloths are primarily made in integrated mills and were adequately represented in the wage data upon which my proposed determination was based. In consequence, these items have been added to the definition of the Cotton, Silk, and Synthetic Textile Branch.

After consideration of all matters presented in this proceeding the proposed decision is hereby adopted, with the definitional change indicated above.

Accordingly, pursuant to authority vested in me by the Walsh-Healey Public Contracts Act this part is amended as follows:

1. Subsection 202.43(b) is amended to read as follows:

"(b) *Minimum wage.* (1) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis. The Cotton, Silk, and Synthetic Textile Branch includes the manufacturing, processing, bleaching, dyeing, printing or other finishing

of any of the following items which are within the scope of the Textile Industry, as defined herein, and are made primarily of cotton, silk, or synthetic fiber or mixtures of these fibers: yarn; thread; broad-woven fabrics (more than 12 inches in width); sheets and pillow cases; blankets; woven bedspreads; diapers; towels; and wash cloths, scrubbing cloths and dishcloths.

(2) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, under contracts subject to the Walsh-Healey Public Contracts Act shall be 87 cents an hour, arrived at either on a time or piece-rate basis."

2. Subsection 202.43(c) is amended to read as follows:

"(c) Subminimum wages authorized: (1) Learners may be employed subject to the following terms and conditions:

(i) Learners may be employed in the occupations of machine operating, machine tending, machine fixing, and jobs immediately incidental thereto;

(ii) In the performance of contracts for the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry learners may be paid a subminimum rate of 92 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and earnings, based upon those piece rates, if such earnings are in excess of 92 cents an hour. In the performance of contracts for products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, learners may be paid a subminimum rate of 80 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and earnings, based upon those piece rates, if such earnings are in excess of 80 cents an hour;

(iii) The length of the learning period shall be 240 hours unless the learner has had previous experience in the industry in which case the number of hours of such experience must be deducted from the 240 hour learning period.

(iv) The number of learners may not exceed 3 percent of the total number of machine operators, machine tenders, machine fixers and persons engaged in jobs immediately incidental thereto except where, upon application to the Administrator of the Wage and Hour and Public Contracts Divisions or his authorized representative, a special certificate has been issued authorizing employment of learners in excess of 3 percent to meet a plant's abnormal situation created by establishment of new plants, expansion of production or plant facilities, and the like. Such special certificates will not be issued where it appears that experienced workers are available to the employer within the area from which he customarily draws his supply of labor, or that the issue of a special certificate will create unfair competitive labor cost advantages, or will impair or depress working standards established for experienced workers for work of a like or comparable character in the industry.

(2) Handicapped workers may be employed at wages below the applicable minimum wages specified herein upon the same terms and conditions as are prescribed for the employment of handicapped workers by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (29 CFR Parts 524, and 525, respectively), under section 14 of the Fair Labor Standards Act as amended.

The Administrator of the Public Contracts Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped workers not subject to the Fair Labor Standards Act or subject to different minimum rates of pay under the two Acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act."

3. The effective date provided in subsection 202.43(e) is changed to read February 21, 1953.

(49 Stat. 2036; 41 U.S.C. 35)

Signed at Washington, D. C. this 15th day of January 1953.

Maurice J. Tobin, Secretary of Labor

Published in the Federal Register, January 22, 1953.

(WH53-751)

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Exhibit B

Filed Jan. 19, 1953

Order Denying Motion for Further Hearing and Oral Argument

UNITED STATES DEPARTMENT OF LABOR

WASHINGTON, D. C.

IN THE MATTER OF THE PREVAILING MINIMUM WAGE FOR THE TEXTILE INDUSTRY.

I have considered the motion for further hearing and for oral argument submitted by Attorney James L. Rankin for and on behalf of 34 cotton textile mills and dated January 5, 1953, and a similar motion filed by Attorney W. Glen Harlan on behalf of 37 cotton manufacturing companies, parties to the proceeding, and dated January 7, 1953. The stated basis for these motions is to afford opportunity to examine and cross-examine witnesses with respect to certain documentary material received in the record of this proceeding subsequent to the close of hearings before the Examiner on September 5, 1952.

The materials referred to consist of items designated as Supplementary Government Exhibits A-1 through A-8 and Supplementary Government Exhibit B.

Supplementary Government Exhibits A-1 through A-8 consist of tabulations prepared by the Bureau of Labor Statistics at the request of the Wage and Hour and Public

Contracts Divisions following the close of the public hearing in this matter. These tabulations relate to earnings and minimum wage rates for janitors, battery hands, and hand truckers in cotton and synthetic textile plants. Sup-
298 plementary Government Exhibit B consists of a tabulation prepared by the Bureau of Census showing shipments of house furnishings, except curtains and draperies, by integrated mills in the year 1947. This data was similarly requested by the Wage and Hour and Public Contracts Divisions following the close of the hearing.

The statistical data contained in Supplementary Government Exhibits A-1 through A-8 were based upon surveys conducted by the Bureau of Labor Statistics in March 1952 in the Textile Industry. At the hearing before the Examiner the Government introduced a number of tabulations prepared by the Bureau of Labor Statistics and based upon the survey data. These tabulations were designated as Government Exhibits 18 through 24. In the course of the hearing extensive examination was conducted of BLS representatives in regard to the methods of conducting the surveys and the survey data as shown by the tabulations introduced. These representatives were acutely examined in regard to the accumulation of data on earnings and wages for janitors and related occupations. Following the close of the hearing the Administrator of the Wage and Hour and Public Contracts Divisions, desiring some additional elaboration of data regarding wages and earnings of janitors, battery hands, and hand truckers, requested the BLS to prepare the additional tabulations. These additional tabulations were considered by me in conjunction with all of the evidence and data in the record in arriving at the conclusions indicated in my proposed decision of December 5, 1952. The data contained in Supplementary Government Exhibits A-1 through A-8 does not in any sense constitute new evidence, but is rather an elaboration of the BLS survey data presented in a number of different tabular forms in Government Exhibits 18 through 24.

299 Supplementary Government Exhibit B relates to production of certain categories of house furnishings and was introduced for the purpose of indicating the extent to which such house furnishings are produced in integrated mills, i.e. mills which both weave the fabric and produce the finished article. The purpose of this data was merely to indicate for the record that the BLS survey tabulations (Government Exhibits 18 through 24) adequately reflect wages of workers producing sheets, pillowcases, towels, and wash cloths, but that such tabulations contain less complete information on workers producing bedspreads, bedsets and other textile house furnishings. The purpose of introduction of this exhibit was merely for clarification and elaboration of basic data introduced at the hearing and did not in itself constitute any new basic data.

Mr. Rankin's motion also makes reference to a statement contained in the proposed decision that "in addition, information on average hourly earnings from the BLS, employment and production figures from the Census of Manufacturers and copies of collective bargaining agreements on file with the BLS were available to the Department." Mr. Rankins asserts that the material referred to in such statement was not a part of the record data presented at the hearing. His assertions in this regard are incorrect. The average hourly earnings data referred to therein are reflected in Government Exhibit 25 and were the subject of discussion by witnesses at the hearing. The employment and production figures from the Census of Manufactures are contained in Government Exhibits 8, 9 and 10. The reference to copies of collective bargaining agreements on file with the BLS was inserted

300 for the purpose of indicating that the files of the Department of Labor contained information similar to the data submitted by the unions at the hearing with respect to provisions of collective bargaining agreements in the Textile Industry. Any reference to such material was merely corroborative of the basic record data pro-

duced at the hearing. The files in question are open for public inspection.

The notice of proposed decision contained a provision that interested parties might submit within the time allowed for filing exceptions "any data intended either in rebuttal or support of any of the tabulations or data received as part of the record following the close of the hearing." The notice of proposed decision was mailed to all parties participating in the hearing and the supplementary exhibits were enclosed with the notice of proposed decision so that the parties might have adequate knowledge as to the nature of the data contained therein in order to prepare proper rebuttal evidence.

In view of the considerations expressed above it is my conclusion that the supplementary data received as part of the record following close of the hearings is an elaboration and clarification of the primary data contained in the record of the hearing and does not require that I provide opportunity for examination and cross-examination of the persons who prepared such data. I am also of the opinion that further oral argument in regard to the issues raised in this proceeding is unnecessary. Accordingly, the motion for rehearing and oral argument is denied.

Signed at Washington, D. C. this 12th day of January 1953.

(s) Maurice J. Tobin, Secretary of Labor.

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Exhibit C

UNITED STATES DEPARTMENT OF LABOR
WASHINGTON, D. C.

Filed Jan. 19, 1953

TITLE 41—PUBLIC CONTRACTS
PART 202—MINIMUM WAGE DETERMINATIONS

NOTICE OF PROPOSED AMENDMENT TO THE DETERMINATION OF THE PREVAILING MINIMUM WAGE FOR THE TEXTILE INDUSTRY

This matter is before the Department pursuant to the Act of June 30, 1936, (49 Stat. 2036; 41 U.S.C. 35) as amended by the Defense Production Act Amendments of 1952, (Sec. 310, P.L. 429, 82nd Congress), entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes," and known as the Walsh-Healy Public Contracts Act.

The Secretary of Labor, in a minimum wage determination issued pursuant to the provisions of the Walsh-Healy Public Contracts Act and made effective November 16, 1948 (13 F.R. 6083), determined the minimum wage for persons employed in the Textile Industry in the performance of contracts with agencies of the United States Government subject to the Act to be not less than 87 cents per hour. This determination also authorized employment of learners in specified occupations at rates not less than 80 cents an hour for a learning period not longer than 240 hours. This determination is currently in effect as editorially revised and published in the Federal Register on July 20, 1950 (15 F.R. 4634).

The Textile Workers Union of America, CIO, submitted a petition dated January 23, 1952, for determination of a minimum wage of $1.135 an hour in the Textile Industry with a wage escalator provision of one cent quarterly adjustment for each 1.32 rise in the Consumer's Price Index

(Old Series) beginning with February 15, 1951, and urged retention of the currently effective definition of the Industry.

The United Textile Workers Union, AFL, submitted a petition, dated March 4, 1952, for determination of a minimum wage of $1,13 an hour with an escalator clause and the other so-called fringe benefits of vacations with pay and holiday and shift premiums as provided in its collective bargaining agreements.

Representations in these petitions with respect to current wage rates provided in collective bargaining agreements and other wage data reported from time to time by textile manufacturing establishments and associations indicated that the 87-cent rate now in effect may not reflect the prevailing minimum wages in the Textile Industry. This proceeding was, therefore, initiated for the purpose of consideration of an amendment to the current determination which will reflect the minimum wages now prevailing.

An informal panel conference was held on March 4, 1952 at which representatives of the Department of Labor met with representatives of management and labor in the Textile Industry and discussed various matters concerning the Textile Industry, including questions of definition of the Industry and the obtaining of adequate wage information.

GENERAL

Notice of a hearing in this matter to be held on September 4, 1952 was published in the Federal Register on July 26, 1952 (17 F.R. 6871). Copies of the notice and a press release announcing the hearing were mailed to trade associations, unions, and to individual companies
302 in the Industry. In addition, the press release was distributed to newspapers and trade publications.

This notice and release advised interested persons of the time and place at which they could appear and offer testimony; (1) as to what are the prevailing minimum wages in the Textile Industry; (2) as to whether there

should be included in any amended determination for this Industry provision for employment of learners, beginners and/or apprentices at subminimum rates, and if so, in what occupations, at what subminimum rates, and with what limitations, if any, as to length of period and number or proportion of such subminimum rate employees; and (3) as to the propriety of the present definition of the Industry as set out in the notice of hearing. The notice stated that "The following information is particularly invited with respect to the subject matter of the testimony or statements of each witness: (1) the number of workers covered in the presentation; (2) the number and location of establishments; (3) minimum wages paid at the end of a probationary or learner period, the number of workers receiving such wages, and the occupations in which these employees are found; (4) the entrance rate for learners, beginners or probationary workers, the length of such learning or probationary period, and the number of workers paid such entrance rates; and (5) the product or products made by the establishments included." The notice further stated that "To the extent possible, data should be submitted in such a manner as to permit evaluation thereof on a plant by plant basis."

A notice of change of the hearing date and place to 10 a.m. September 3, 1952 in Conference Room A of the Departmental Auditorium in Washington, D. C. was published in the Federal Register on August 8, 1952 (17 F.R. 7255) and was given the same informal distribution to the press and interested employer and employee organizations as the original notice.

The hearing was held on September 3, 4, and 5, 1952, pursuant to the notice and the Rules of Practice for Minimum Wage Determinations under the Walsh-Healey Public Contracts Act (17 F.R. 7944). Representatives of employees and employers appeared at the hearing to present evidence and testimony, and the record was kept open for a specified period beyond the close of the hearing for receipt of additional data and briefs.

Management appearances at the hearing included representatives of the National Cotton Manufacturers Association, the American Cotton Manufacturers Institute, the Association of Cotton Textile Merchants of New York and of several textile establishments. Labor appearances included representatives of the Textile Workers Union of America (CIO) and the United Textile Workers Union (AFL).

In addition letters, statements and briefs were filed by interested parties both at the hearing and following the close of the hearing. All such material has been made part of the record herein. The hearing record was closed as of October 29, 1952.

DEFINITION

The currently effective definition proposed for adoption in the Notice of Hearing reads as follows:

(a) Definition. For the purpose of this determination the term "Textile Industry" means:

(1) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs containing any wool) from cotton, flax; 303 jute, other vegetable fiber, silk, grass, or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (7) and (8); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber;

(2) The manufacturing of batting, wadding, or filling and processing of waste from the fibers enumerated in clause (1);

(3) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics or cords (except carpets and rugs containing any wool) from any fiber or yarn;

(4) The processing of any textile fabric, included in this definition of this industry, into any of the following products: Bags, bandages and surgical gauze, bath mats and related articles, bedspreads, blankets, diapers, dishcloths, scrubbing cloths and washcloths, sheets and pillow cases, tablecloths, lunch-cloths, napkins, towels, window curtains, shoelaces and similar laces;

(5) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(6) The manufacturing of cordage, rope or twine from any fiber or yarn including the manufacturing of paper yarn and twine;

(7) The manufacturing or processing of yarn (except yarn containing any carpet wool) or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (1), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

(8) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (1), with a margin of tolerance of 2 percent to meet the exigencies of manufacture;

(9) The manufacturing, dyeing, finishing or processing of rugs, or carpets from grass, paper, or from any yarn or fiber except yarn containing any wool but not including the manufacturing by hand of such products.

The definition as proposed in the Notice of Hearing is that contained in the determination now in effect for the Industry.

At the hearing there were introduced into the record letters from five concerns recommending that the proposed definition be modified to exclude "varnished fabrics" on the grounds that these products are not generally made in plants making the other products included in the definition and further that the industrial processes required and the wages paid differ from those in the Textile Industry generally. In this connection, Mr. Verl E. Roberts, Assistant Administrator of the Wage and Hour and Public Contracts Divisions, stated for the record that the Divisions have ruled that the present definition does not cover varnished cloth, artificial leather, oil cloth, window shade cloth, linoleum, felt-base floor covering, dental floss, buckram, waxed cloth, and plastic-treated cloth.

304 The representative of the Textile Workers Union of America argued that coating and impregnating are normal parts of the dyeing and finishing industry. However, it appears from a later statement of this representative and from the Census of Manufactures, 1947, that while dyeing and finishing plants do, to some extent, perform such coating and impregnating operations, the greater proportion of these operations are performed in plants which specialize in this field.

On the basis of the record, therefore, I find that the definition of this industry should continue to exclude such coated or impregnated textile products as varnished cloth, artificial leather, oil cloth, window shade cloth, linoleum, felt base floor covering, dental floss, buckram, waxed cloth and plastic-coated cloth.

The National Association of Wool Manufacturers, in a letter accepted for the record, argued that the definition of the Industry should be modified to exclude any product presently included which contains any proportion of wool or man-made fibers (other than rayon or acetate). Moreover, the Association recommended, as it had previously at the public hearing in the Matter of the Redetermination of the Prevailing Minimum Wages in the Woolen and Worsted Industry, held on May 15, 1952, that these prod-

ucts, that is, products containing any portion of wool or man-made fibers (other than rayon or acetate), should be included in the definition of the Woolen and Worsted Industry. The adoption of this proposal would have the effect of removing from the definition of the Textile Industry a great variety of items made from mixtures containing minor proportions of wool or any proportion of man-made fibers (other than rayon or acetate) which are normally manufactured by firms engaged primarily in the production of cotton or synthetic rather than woolen or worsted textiles.

The present lines of demarcation between the Textile Industry, and the Woolen and Worsted Industry and the Knitting, Knitwear and Woven Underwear Industry, which would also be affected if the proposal were adopted, are based on traditional industry concepts which have been recognized by the Bureau of the Budget, the Bureau of the Census and in the administration of the Fair Labor Standards Act and the Public Contracts Act. While there is an indication of certain trends which may in time justify a reevaluation of these dividing lines, it does not appear that such shifts as have occurred would warrant a change at this time. Consequently, I find that the request of the National Association of Wool Manufacturers should be denied at this time and that the present definition should not be changed in this regard.

With the exception of the two points mentioned above the only other proposals with respect to the definition were made by the petitioners and three independent unions in the textile field all of whom recommended that the present definition of the Textile Industry be retained. The other parties present made no proposals either for or against the retention of the present definition. As indicated below, adequate wage data are available in this proceeding only for the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry and I am proposing at this time a redetermination of the prevailing minimum wage only for this branch, which is defined at the conclusion of this proposed determination.

NATURE OF AVAILABLE WAGE DATA.

As a part of its regular program of conducting wage surveys of important industries, the Bureau of Labor Statistics made a study of earnings and related wage practices in the cotton and synthetic textile industries. These surveys which relate to a payroll period in March, 1952, covered a large number of firms and employees in the Textile Industry and constitute the primary data upon which a determination of prevailing minimum wages in this industry can be based.

305 The first of these surveys relates to establishments in the following categories: broad woven fabric mills primarily engaged in weaving cotton fabrics over 12 inches in width; cotton yarn mills primarily engaged in spinning, twisting, winding or spooling cotton yarn; and cotton thread mills. The second survey includes establishments in the following categories: broad woven fabric mills primarily engaged in weaving fabrics of spun or filament silk, rayon, nylon or other synthetic fabrics over 12 inches in width; yarn mills primarily engaged in manufacturing spun yarns from silk, rayon, nylon, or other synthetic staple fiber products; yarn throwing mills engaged in rewinding, twisting, plying, and packaging of filament silk, rayon, nylon or other synthetic fibers; and thread mills manufacturing thread from silk, rayon, nylon or other synthetic fibers. In addition to workers engaged in producing these items, the surveys cover other workers in these establishments engaged in producing fabricated textile products and in dyeing and finishing operations.

The Bureau of Labor Statistics published the results of these surveys in separate releases for cotton and for silk and synthetic textiles. Subsequently, the Bureau prepared additional tabulations at the request of the Wage and Hour and Public Contracts Division. The original releases plus these additional tabulations are contained in Government Exhibits 18 through 24. After the hearing a need arose for additional tabulations and the Bureau of Labor Statis-

ties prepared a series of supplementary tabulations which were also based on information contained in the two surveys. These latter Bureau of Labor Statistics tabulations are hereby made a part of the record and are available to any interested party for examination and comment. For purposes of reference these tables are identified as Supplementary Government Exhibits A-1 through A-8.

The American Cotton Manufacturers Institute employed a statistical agency to conduct a mail questionnaire survey of firms manufacturing textiles and related products. However, the Institute was unwilling to present for the record more than a fragment of the tabulations which had been prepared from the survey and which the Department had been given to understand would be available. The data offered for the record include a tabulation by county of average minimum wages, weighted by number of establishments, for each county in its survey from which two or more establishments submitted replies to the questionnaire, except where such minima were identical. Subsequent to the hearing, the Institute presented a similar tabulation showing county averages weighted by number of employees. These data include watchmen and others of the custodial group not covered by the Act. In addition, they include the earnings of workers engaged in the manufacture of products not included in the definition of the Textile Industry. Even if these limitations were not present, however, it is evident from the data that the ACMI approach would inevitably lead to illogical and inequitable variations in the determined minimum wage from one community or county to another. For example, the Institute's survey reported an average minimum wage weighted by employees for Tallapoosa County, Alabama of 101.3 cents an hour. The comparable rates for four nearby counties, three of which are contiguous and one of which is one county removed, were as follows: Chambers, 92.1 cents; Lee, 89.7 cents; Elmore, 99.7 cents; and Talladega, 102.7 cents. It is clear also that whatever separation might be made within the counties, on a community basis, or how-

ever the communities or counties were aligned, equally disparate results would ensue.

The Textile Workers Union of America and the United Textile Workers of America submitted copies of a number of collective bargaining agreements and lists showing the names and locations of plants in the industry, the type of products manufactured, employment and minimum wages paid. These lists include both union and nonunion establishments and cover a large proportion of the 306 Industry.

In addition, information on average hourly earnings from the Bureau of Labor Statistics, employment and production figures from the Census of Manufactures and copies of collective bargaining agreements on file with the Bureau of Labor Statistics were available to the Department.

LOCALITY.

In each of the three previous wage determinations for this industry under the Public Contracts Act a single wage was recognized as the prevailing minimum wage in the industry throughout the United States. At the hearing before the Examiner in the present proceeding arguments were presented with regard to whether recognition of a single nation-wide rate for this industry would be consistent with the statutory language and intent of the Public Contracts Act. It was argued by counsel representing the ACMI and a number of other textile manufacturers that the "locality" language of section 1(b) of the Act,[1] requires that minimum rates be established by small geographic

[1] Section 1(b) reads as follows: "That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract".

areas such a communities in which textiles are produced. The ACMI suggested that in some situations a county or even groups of counties could be considered as a locality. It further suggested that the "locality" comprised of groups of counties need not be confined within state lines but might run through more than one State depending on the various factors and circumstances which might be present. In presenting these arguments no attempt was made to list or otherwise define the factors or circumstances which should be taken into account in determining the limits of such localities and, in fact, it was conceded by counsel that neither they nor the firms they were representing were prepared to offer any concrete criteria which might be applied in delineating such localities.

The National Association of Cotton Manufacturers and both of the unions participating in the hearing presented arguments and data in support of a single minimum wage for the Industry. A post-hearing brief filed by the NACM presented a number of arguments to show that the statutory language and the purpose and intent of the Public Contracts Act require a construction which would permit recognition of an industry-wide minimum, and that all of the factors present in the Textile Industry require that a single industry minimum be recognized in this case.

I have carefully weighed all of the arguments presented and I have considered in detail all of the voluminous data contained in the record in attempting to arrive at a proper determination of these questions. Before undertaking a discussion and analysis of the wage data the legal aspects of the arguments presented on the locality question should be dealt with.

It is abundantly evident from the legislative history of the Act that its purpose was to prevent the flow of Government business into the hands of firms that pay substandard wages and maintain low employment standards. Its purpose was, in short, to bring about a situation where employers paying fair and reasonable wages would not lose out on Government business to low-paying firms. Under

the system of competitive bidding adhered to by the
307 Government, the various contracting agencies must accept the lowest responsible bid. Obviously, in an industry which utilizes standard equipment and has approximately the same raw material costs, any substantial differences in wages would be reflected in bids submitted on Government work. In recognition of this fact and in order to encourage the maintaining of fair wage standards Congress enacted the Public Contracts Act.

With this Congressional purpose in mind, the specific language of the Act must be construed. Any construction of the locality language would result in freezing the lows and the highs in wages would certainly not carry out the purpose of the Act. In other words, if the dominant plant or plants in community A were paying substantially lower wages than plants in community B, the recognition of community A and community B as separate localities would mean that plants in A could continue to underbid plants in B and the situation would be frozen at that level.

The legislative history of the Act indicates clearly that Congress gave serious and lengthy consideration to the possible approaches to the problem of arriving at appropriate minimum wages. In recognition of the difficulties inherent in this field, Congress decided to vest in the Secretary of Labor the administrative function of carrying out the minimum wage provisions of the law and established certain criteria to guide the Secretary of Labor in such functions. The factors which have a bearing on minimum wages present such a pattern of diversity from industry to industry as to render any single formula for determining prevailing wages impractical. Consequently, Congress wisely allowed a degree of administrative discretion to be followed by the Secretary of Labor in applying the criteria laid down in the Act. The statute, accordingly, directs the Secretary of Labor to determine prevailing minimum wages in accordance with three distinct standards, namely, the prevailing minimum wages for persons employed 1) on similar work or 2) in the particular

or similar industries or 3) in groups of industries currently operating in the locality in which the contract is to be performed. In the context of the Act it seems proper to conclude that the phrase "currently operating in the locality" was intended to qualify only groups of industries and does not limit "similar work" or "particular or similar industries."

It is clear, then, considering the broad administrative powers provided throughout the Act, that it was the Congressional intent to give the Secretary of Labor substantial latitude in regard to determining prevailing minimum wages and to apply any one or combination of the criteria enunciated in the Act in order to properly carry out the purposes of the Act.

The evidence in the record discloses certain predominant characteristics of the Textile Industry as follows: the Industry is principally located in three sections of the country, New England, the Middle Atlantic States and the South. Competition in the Industry is nation-wide in scope and marketing of the products of the Industry is similarly on a national scale. Only in rare instances is there found a situation where a mill markets its product within a limited geographic area. Most textile producers maintain sales representatives or agents in the textile center known as Worth Street in New York City and the vast bulk of textiles are sold through such center. Producers of textiles in such widely separated areas as Maine and Alabama compete for the same business in the Worth Street market. It is not uncommon for mills in different sections of the country to perform different production operations on a given lot of textile fabric. For example, textile gray goods woven in South Carolina may be shipped to New Jersey or Rhode Island for finishing operations consisting of bleaching, dyeing, printing, etc. The goods are then sold on the New York market and may be shipped to customers in Maine, California, Florida or any other place in the United States, or elsewhere in the world.

308 The record shows also that Government purchases of textiles are not confined within any geographic

limits. In the normal case the Government invites bids from firms located in *every textile producing area* and bids are received from mills in widely separated regions. Pursuant to a single invitation to bid, contracts for a particular item may be awarded to mills in a number of different States. In some instances various steps in the processing of textiles required under a Government contract will take place in different States and different regions. A single firm bidding on Government contracts will frequently be found to have a number of different mills located in different States or areas. In no instance is it possible for a Government contracting agency to have any knowledge of the locus of production prior to receipt of bids and award of contracts. In other words, there is no way of ascertaining in advance where a proposed Government textile award may be carried out.

From all of the facts referred to above, it is evident that the predominant factors in the Textile Industry do not point toward any regional or geographic differences in terms of industry characteristics, and that, in an economic sense, the locality of the industry is very broad. Based upon these considerations, I have concluded that the factors present here do not warrant application of the last of the three criteria contained in section 1(b) of the Act, namely, the minimum wages for persons employed in "groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract."

It is my considered judgment, moreover, that even if the "locality" language of the Act is construed as limiting the entire wage determination function, it is not necessary to impose a narrow geographic connotation on such language in such a manner as to frustrate the entire purpose for which the statute was enacted. While it is true that the term locality is commonly used to denote a geographic locus or unit the term possesses sufficient flexibility in meaning to convey a broad or narrow sense depending upon the context in which it is used. The word must,

therefore, be construed within the context of the Act and consistent with the intent and purpose of the Act. As I have previously stated I believe it would be illogical to select this word out of the Act and give it a meaning which would cancel out the entire purpose for which the Act was conceived. Furthermore, since the time the Public Contracts Act was enacted minimum wage determinations under this Act for numerous industries have recognized a single nation-wide minimum wage. In only a few industries smaller localities were recognized. It is reasonable to assume that if this construction of the Act did not comport with the Congressional intent Congress would have acted to alter the construction. The fact that Congress, over a period of 16 years, did not alter the statutory language, even after repeated requests, warrants a conclusion that the construction placed on such language by the Department of Labor conforms with the Congressional purpose. Consequently, even on this basis, and considering the record of this proceeding, I find that the locality in which the products of the textile industry are to be manufactured or furnished under Government contracts is coextensive with the entire area in which the industry operates, and that the rate determined herein for the textile industry is the rate prevailing in such locality.

Within the framework of these considerations I have analyzed the available wage data to arrive at a proper determination of prevailing minimum wages in this industry.

ANALYSIS OF WAGE DATA

In the surveys of the cotton and synthetic (and silk) textile industries, the Bureau of Labor Statistics tabulated returns from 467 establishments, employing 289,923 employees. The surveys were limited to plants with 21 or more employees. For plants in this size group, the
399 Bureau's returns covered 40.8 percent of the establishments employing 55.7 percent of the workers. The Census of Manufactures for 1947, the latest available

period, indicates that plants with 21 or more employees in these two branches of the textile industry had 99.5 percent of all workers in these branches. The returns were weighted in accordance with generally accepted statistical procedures to represent all the plants and employment in *plan* plants with 21 or more workers in the branches surveyed.

As noted above, the Bureau of Labor Statistics surveys were limited to plants primarily engaged in spinning or throwing yarn or thread and related operations or in weaving broad woven fabrics. However, since a number of these plants also produced fabricated products such as sheets, pillow cases, towels, and wash cloths and performed dyeing and finishing operations, wages of workers manufacturing these fabricated items and performing dyeing and finishing operations in such establishments are included in the survey and reflected in the tabulations. A letter received from Maxwell R. Conklin, Chief, Industry Division, Bureau of the Census, dated November 6, 1952, states that in the year 1947, 64 percent of all sheets and pillow cases and 95 percent of all towels and wash cloths were produced in integrated establishments, i.e, establishments engaged in spinning and weaving but also producing fabricated items. The information from Mr. Conklin also indicates that only 22 percent of all bedspreads and bedsets and only 2 percent of such textile house furnishings as laundry bags, blankets, pillows and slip covers (other than sheets, pillow cases, towels, wash cloths, bedspreads and bedsets) were produced in integrated establishments. For purposes of reference the letter received from Mr. Conklin is hereby made part of the record and is identified as Supplementary Government Exhibit B.

A number of wage reductions occurred in New England plants between the date of the survey and the date of the hearing, but these changes did not affect the surveys' data for intervals below $1.06½. With this exception, no question as to the adequacy and accuracy of the surveys was raised by either of the petitioners or the National Association of Cotton Manufacturers. However, representatives of

the American Cotton Manufacturers Institute raised a number of questions relating to the sampling procedures used by the Bureau in making the survey and questioned the method followed by the Bureau in obtaining the information on plant minimum entrance rates and plant minimum job rates. With respect to the sampling methods used, it is clear from the testimony of Harry M. Douty, Chief, Division of Wages and Industrial Relations, Bureau of Labor Statistics, that the Bureau, in making these surveys, followed professionally accepted statistical practices. It is also clear from the testimony that the objections raised with respect to the sampling procedures show an unfamiliarity on the part of the Institute representatives with these standard statistical procedures. There is no question from the evidence in the record that the Bureau of Labor Statistics gave proper weight to both large and small plants, took into account the different types of products included in its surveys and adequately covered all parts of the country. It is also clear from the record that the sample obtained by the Bureau was more than sufficient to assure adequate coverage and results.

I conclude, therefore, that the surveys are properly representative of all establishments included within the scope of the definitions of the cotton and synthetic (and silk) textile industries used by the Bureau.

I also conclude that the Bureau of Labor Statistics wage data adequately reflect wages of workers producing sheets, pillow cases, towels and wash cloths but contain insufficient information on workers producing bedspreads, bedsets and other textile house furnishings. Moreover, these data do not provide a basis upon which a finding can be made as to the prevailing minimum wages for certain other products and operations now include din the definition of the
310 Textile Industry, namely, batting, wadding, and filling; the processing of waste; narrow fabrics (fabrics 12 inches or less in width); bags; bandages and surgical gauze; bath mats and related articles; diapers; braid and lace; cordage, rope and twine; and carpets and rugs.

The American Cotton Manufacturers Institute also offered testimony of one witness and telegrams and letters from four companies, designed to show that the Bureau of Labor Statistics had excluded certain low-paid workers from the survey. The witness was Robert K. Argo, Personnel Manager of the Alabama Mills, Inc., who testified with respect to his conversation with the field representative of the Bureau who obtained information from the Clanton, Alabama, plant of the company.

Mr. Argo stated that the Bureau's field representative did not obtain any information with respect to employees whose wages were below $1.015 per hour in the Clantin plant, although according to his recollection at the time of the survey the plant had about 15 employees paid 97 cents, the only rate below $1.015 paid in the plant. Mr. Argo also testified that the field agent told him specifically that in accordance with instructions, no data for custodial employees were being recorded.

There has been received in the record a deposition made by Harry M. Douty clarifying portions of the testimony at the hearing regarding Mr. Argo's statement. This deposition shows clearly that, under the instructions given to the Bureau's representatives, wages of custodial employees were to be excluded only in connection with information obtained on minimum plant entrance rates and minimum job rates. With respect to all other information, however, the instructions were specific that the Bureau's representatives were to survey the earnings of all workers in the plant, including custodial employees. Consequently, the earnings of employees earning less than the plant minimum job rate are included in all tables except Tables 4, 5, and 6 of Government Exhibits 18, 19, and 20, both with respect to the Clanton plant of Alabama Mills, Inc., and with respect to all other mills included in the survey. The deposition states the Bureau's original schedule for the Clanton plant showed 14 workers earning 97 cents; eight of these were reported as janitors and properly excluded from Tables 4,

5, and 6, under the Bureau's instructions. All 14 of these workers were included in the other tables. The six workers other than janitors, reported by the Bureau to be paid 97 cents were not employed in any of the selected occupations for which specific information was obtained. I cannot conclude from the record that these six workers should have been included in Tables 4, 5, and 6. It is obvious, however, that Mr. Argo's contention that no workers in the Clanton plant paid less than $1.015 per hour were included in the Bureau's survey is without merit.

As noted above, four companies submitted statements in the form of telegrams dealing with this general subject. The Summerville Manufacturing Company, Summerville, Georgia, stated that the minimum wage in that plant was 96.5 cents an hour, a rate paid on the following jobs: scrubbers, yardmen, and cotton truckers. The deposition by Mr. Douty shows that the Bureau reported this plant as paying a minimum job rate of 96.5 cents. This rate was also reported as the minimum entrance rate. The Bureau's record also shows that 16 employees were classified as janitors, three of whom were paid 96.5 cents. The other 13 janitors were paid in excess of this figure. The other three companies, the Pacolet Manufacturing Company, Pacolet, South Carolina, Julia Cade Mills, Inc., Albertville, Alabama, and Whittier Mills Company, Chattahoochee, Georgia, also in telegrams read at the hearing and in later letters supplied information as to minimum wages paid and the occupations to which these rates apply. Mr. Douty's deposition shows that four plants of Pacolet Manufacturing Company were included in the original sample for the survey. The plants were visited by the Bureau representatives, but in
311 each case the company declined to furnish information. The Bureau in consequence substituted other mills of the same general characteristics in accordance with well-established statistical sampling procedures. With respect to Julia Cade Mills, and Whittier Mills, neither was included in the sample for the survey and no Bureau of Labor Statistics information is available.

It should be noted from the letters received from these companies that with the exception of plants No. 3 and 5 of the Pacolet Company, the lowest rate in the plant is paid to sweepers or scrubbers, which occupations were classified by the Bureau of Labor Statistics for the purpose of this survey in the janitorial category.

On the basis of the evidence, I find that the data in the Bureau's tables showing minimum job rates were accurately collected and compiled and may properly be used in evaluating the prevailing minimum wage practices in the Cotton, Silk, and Synthetic Branch of the Industry.

As indicated heretofore, one of the bases which may be used by the Secretary of Labor in determining prevailing minimum wages is that of "similar work."

With respect to this criterion, evidence in the record points particularly to three occupations which are substantially the same in job content, are common to most firms in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry, and are generally the lowest paid occupations. These occupations are: janitors (excluding machinery cleaners); battery hands; and hand truckers (including bobbin boys). These occupations were included within the list of "selected occupations" for which the Bureau of Labor Statistics reported separate data. This list, together with the job descriptions applicable thereto, were developed as a result of the Bureau's extensive experience in making surveys of the industry and in consultation with representatives of labor and management. The definitions were designed to permit comparisons between occupations having similar work content in various plants or groups of plants in the industry, regardless of variations from plant to plant in actual nomenclature. There was no criticism in the record that these occupations individually did not have in fact similar content. In consequence, from the record as a whole, it is clear that prevailing minimum wages for "similar work" can be determined by examining data for these individual occupations.

The three occupations are defined by the Bureau as follows: *Janitor (day porter, sweeper, charwoman, janitress)*: cleans and keeps in an orderly condition factory working areas and wash rooms, or premises of an office, apartment house, or commercial or other establishment. Duties involve a combination of the following: sweeping, mopping and/or scrubbing, and polishing floors; removing chips, trash and other refuse; dusting equipment, furniture, or fixtures; polishing metal fixtures or trimmings; providing supplies and minor maintenance services, cleaning lavatories, showers, and rest rooms. Workers who specialize in window washing are excluded.

Battery hand: transfers or loads quills or bobbins of filling to the battery or loading hopper of automatic looms. May convey filling to looms by means of a hand truck.

Trucker, hand (including bobbin boy): pushes or pulls hand trucks, cars or wheel-barrows used for transporting goods and materials of all kinds about a warehouse, manufacturing plant, or other establishment, and usually loads or unloads hand trucks or wheelbarrows. May stack materials in storage bins, etc., and may keep records of materials moved.

Exhibits at the hearing introduced by the Government include wage data on these three occupations in Exhibits 18, 19, 20, 23, and 24. The area tabulations
312 contained in the last two mentioned exhibits include data for approximately 85 percent of the workers included in the survey. Supplementary Government Exhibits A-1 through A-8 throw additional light on the prevailing minimum wages in the three occupations.

With respect to janitors, Table 3A of Government Exhibit 20 shows 9,299 janitors, slightly less than 2 percent of all of the workers covered by the survey, with an average wage of $1.00 an hour. As Supplementary Government Exhibits 5 and 7 indicate, slightly more than one-fourth of the establishments represented in the survey had no workers whose duties consisted primarily of janitorial services.

The absence of reported janitors is particularly conspicuous in northern establishments where more than half of the reporting establishments represented included no workers whose functions were primarily of this type. In such plants the janitorial services made up part of the work of other employees; for example, sweeping around machines in order to permit a continuation of production (work subject to the Walsh-Healey Public Contracts Act) was performed as an incidental part of duties of other production workers.

Supplementary Government Exhibits A-1, A-5 and A-7 provide information as to the lowest rate paid janitors in establishments reporting such workers; and the lowest job rate in establishments which did not report such workers. Altogether 1120 establishments either reported janitors or reported no janitors but gave information as to the lowest established job rate. Of these establishments, 562 or 50.2 percent either reported $1.00 or more as the minimum rate for janitors or having no janitors, reported $1.00 or more as the lowest job rate. These 562 establishments employ 52.5 percent of the production workers in the industry. In addition, Supplementary Government Exhibit A-1 indicates that over two-fifths of the janitors earn from $1.00 to $1.05, vastly more than are found in any other five-cent interval.

Government Exhibits 23 and 24 indicate the importance of the five-cent interval beginning with $1.00 for janitors in each of the various producing areas reporting separately. Thus, for example, in Alabama and in South Carolina most of the janitors are reported within this range and in North Carolina and Georgia a far larger proportion of the janitors are employed in this interval than in any other. Supplementary Government Exhibit A-7 shows that for establishments having no janitors the rate of $1.00 an hour is by far the most important lowest job rate in the range between 90 cents and $1.05; in this range, almost twice as many establishments reported a minimum job rate of $1.00 as reported any other figure and a similar conclusion is reached on the basis of the number of workers.

From the above it is concluded that $1.00 an hour represents the prevailing minimum wage for janitorial services in the Cotton, Milk, and Synthetic Textile Branch of the Textile Industry.

As previously noted, somewhat less than 2 percent of the workers included in the survey are classified as janitors. It is also clear from the record that many of the workers reported as janitors are performing work of types not directly enough connected with production activities to be covered by the Walsh-Healey Public Contracts Act. It is impossible from the record to determine what proportion of janitors are performing such work and the questionnaire returns of the Bureau of Labor Statistics would not yield such information.

There are, however, two other low-paying occupations about which there can be no doubt that the work is of the type covered by the Act. These occupations are hand truckers (including bobbin boys) and battery hands. Except for janitors, these two occupations have the lowest reported average hourly earnings. These occupations combined include 33,500 workers, or 6.9 percent of all production workers covered by the surveys.

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Supplementary Government Exhibit A-1 as well as Government Exhibits 23 and 24 underscore the importance of the five-cent interval beginning with $1.00 an hour for each of these two occupations. Thus, for the United States, 29.2 percent of the battery hands received wages between $1.00 and $1.05, as contrasted with 3.9 percent of the 95-99.9 cent interval, and as further contrasted with 10.6 percent in *all* intervals below $1.00. Similarly a total of 27.2 percent of the hand truckers (including bobbin boys) earned between $1.00 and $1.05 as contrasted with 11.4 percent in the preceding five-cent interval. A total of 26.9 percent of the hand truckers (including bobbin boys) received earnings of less than $1.00. /

Supplementary Government Exhibits A-4 and A-6 show that most of the establishments reporting either hand truck-

ers or battery hands or both pay a minimum wage to these workers of at least $1.00 an hour and these establishments employ most of the production workers in the Industry. It may also be noted that in the South more establishments pay a minimum of $1.00 an hour to either battery hands or hand truckers than pay minimum wages to these workers at any other rate in the range between 90 cents and $1.05. Supplementary Government Exhibit A-6 indicates that in this range the rates of $1.02 and $1.03 are also important in the South.

Supplementary Government Exhibit A-8 shows data for 211 establishments, primarily located in the North, which reported no workers who primarily performed work included within the description of the occupation of hand truckers (including bobbin boys) or the occupation of battery hands. It will be noted that a majority of these establishments employing a majority of the production workers in such establishments reported the lowest job rate as $1.00 or more. Here again, the rate of $1.00 stands out, with more establishments, employing more workers, reporting a minimum job rate of $1.00 than reported a minimum job rate at any other interval in the range from 90 cents to $1.05. This is true both for the South and for the North.

It is clear therefore that the prevailing minimum wage is $1.00 an hour for the work of hand truckers (including bobbin boys) and for the work of battery hands, in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As mentioned above, evidence in the record establishes conclusively that janitors, battery hands, and hand truckers are the lowest paid workers in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry. It is clear, therefore, that a determination of prevailing minimum wages for other occupations would result in rates at least as high, and in most instances higher, than the rate for these three occupations. However, even if detailed occupational wage data were available for every possible duty in a textile mill, it would obviously be undesirable to make a separate

determination for each such occupation. The necessity for detailed job descriptions and the overlapping of duties between one job and another would lead to complications and misunderstandings in applying the determinations on the part of the industry and to difficult administrative problems in the proper enforcement of such determinations on the part of the Wage and Hour and Public Contracts Divisions of the Department of Labor. In view of these practical considerations, I therefore conclude that it is entirely proper to apply the minimum rate of $1.00 an hour to all occupations in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry which are covered under the regulations issued pursuant to the Walsh-Healey Public Contracts Act. Work performed in one textile mill is by its very nature similar to work performed in other textile mills. Accordingly, on the basis of the prevailing minimum wages for "similar work" in the Industry, I have concluded that $1.00 an hour is the prevailing minimum wage for all occupations in the
314 Cotton, Silk, and Synthetic Textile Branch of the Textile Industry as defined herein.

A second basis for a determination under section 1(b) of the Walsh-Healey Public Contracts Act is wages paid in the particular or similar industries. On this approach, there is special significance to the evidence outlined above that $1.00 is the prevailing minimum rate for janitors, for hand truckers, and for battery hands. Government Exhibits 18, 19, 20, 23 and 24 indicate that these are the lowest paid for the country as a whole of the occupations selected for their particular significance in the industry; and, with rare exceptions, this is true in almost every area. There was no disagreement at the hearing that janitors, including sweepers and scrubbers, generally receive as low a rate as any workers in the Cotton, Silk, and Synthetic Textile Branch of the industry although there was a difference of opinion as to the extent to which such workers are covered by the Act. There was also no disagreement with the Bureau of Labor Statistics' explanation that the "selected" or "key" occupations include a com-

plete range of occupations from the lowest-paid to the highest-paid workers. Workers in these occupations comprise 70.5 percent of all workers covered by the surveys. As noted above, apart from janitors, hand truckers (including bobbin boys) and battery hands generally receive the lowest wage among the "selected" or "key" occupations.

The most important additional lines of evidence as to prevailing minimum wages in the Textile Industry consist of Tables 1 and 5 of Government Exhibits 18, 19, and 20. Table 1 of Government Exhibit 20 clearly shows the importance of the 5-cent interval beginning with $1.00 for the earnings of all workers. Thus for the United States, this is the most important single 5-cent interval, with 11.9 percent of the workers receiving wages within this range, almost twice as many as in the preceding interval and almost as many as the total in all ranges below $1.00. In the Southeast the concentration in this interval is even sharper, with one worker in seven (14.4 percent) receiving wages between $1.00 and $1.05.

Many of the lowest paid workers included in Tables 1 and 7 of Government Exhibits 18, 19, and 20 are watchmen, general janitors (as distinguished from those cleaning around the machines), and other types of custodial workers who perform work not covered by the provisions of the Act. Because of the limitations of these tables, Table 5 is of added significance. This table reports the rates which the plant officials reported as established minimum job rates for noncustodial workers. Table 5A of Government Exhibit 20 shows that most of the textile mills in the survey with an established minimum job rate reported the rate to be $1.00 an hour or more. These plants employ 51.4 percent of the workers in the industry, as compared with 44.3 percent of the workers in plants reporting established job minimum rates of less than $1.00 and 4.3 percent of the workers in plants reporting no established minimum. In terms of number of establishments, only $1.02 is more important (6.6 percent as compared with 6.4 percent); in terms of number of

production workers employed in these establishments, only. $1.03½ is more important. Each of these rates however is above the minimum job rate reported by most establishments employing most of the workers. Although janitors and other custodial workers are excluded by the Bureau in obtaining information on established minimum job rates from plant officials, it may be noted that Supplementary Government Exhibit A-2 indicates that in about half of the establishments with minimum job rates the minimum janitor rate was identical with the established minimum job rate and that janitor minimum rates were more frequently above than below the established minimum job rate.

Another line of evidence is contained in the listings of plant minimums provided by the two textile unions. These listings were made a matter of public record at the hearing. It appears clear from the record that a very large proportion of the plants included in these listings also reported information to the American Cotton Manufacturers Institute. However, the minimum rates for only four of
315 the plants listed were challenged. Excluding such plants from the tabulations, it appears that the major proportion of the industry has minimum rates of $1.00 an hour or more in effect.

From all the evidence in the record, therefore, I conclude that $1.00 an hour is the prevailing minimum wage for the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As noted above, the March 1952 surveys made by the Bureau of Labor Statistics cover plants primarily engaged in spinning and weaving. There is, however, adequate information from other sources indicating that wages in dyeing and finishing establishments are at least as high as those in spinning and weaving plants.

At the hearing a representative of the United Textile Workers of America testified that minimum wages paid in dyeing and finishing plants are higher than those in spinning and weaving plants. This statement was not contradicted.

The listings of plants in the industry supplied by the petitioners contained 510 dyeing and finishing plants employing in excess of 39,000 workers. In his statement at the hearing, the representative of the Texfile Workers Union of America stated that only isolated workers in dyeing and finishing establishments were paid less than $1.05.

In addition, representatives of the Textile Workers Union of America and of the National Association of Cotton Manufacturers stated that average hourly earnings in dyeing and finishing plants traditionally exceed those in spinning and weaving plants. An inspection of such figures published by the Bureau of Labor Statistics bears out these statements. A report published by the Bureau shows that in July 1946 the difference was approximately 10 cents an hour. In July of 1952 the average hourly earnings in dyeing and finishing plants were 16 cents more than those in spinning and weaving plants.

An analysis of collective bargaining agreements on file with the Department of Labor as of 1952 gives information on 410 dyeing and finishing (except wool) establishments with almost 32,000 workers. Ninety-seven percent of these plants with 88 percent of the employees had a minimum job rate of $1.00 an hour or more. These figures cover a very large proportion of the industry as indicated by the fact that for 1947 the Census of Manufactures reported 641 dyeing and finishing (except wool) plants employing 69,000 workers.

In addition, it should be recalled that a number of workers in dyeing and finishing departments are included in the two surveys made by the Bureau of Labor Statistics and, where such workers were included, figures relating to average hourly earnings and minimum job rates covered such workers as well as the workers in the other departments.

On the basis of all of the above I, therefore determine that the prevailing minimum wage for all employees engaged in dyeing and finishing covered by the definition of this Industry is $1.00 an hour.

Learners and Apprentices

The Notice of Hearing invited comment and testimony as to the need for inclusion in any amended determination for a provision covering the employment of learners, beginners, and/or apprentices at subminimum rates. The United Textile Workers of America recommend that learners be permitted at subminimum rates for a period of from 4 to
6 weeks and that the present 3 percent limitation be
316 continued. The record shows that this union recommended that the rates for learners by either 90 cents or $1.00.

The Textile Workers Union of American recommended that there be provision for learners at a rate of not less than $1.03 an hour and further recommended the continuation of the 3 percent tolerance and the learning period presently provided. This latter recommendation was also supported by the Fall River Loomfixer's Union, the Fall River Slasher Tenders' and Helpers Association and the Fall River Drawing-In, Knot-Tiers' and Warp-Twisters' Association. The Soft Fiber Manufacturers' Institute recommended a provision for learners which contained an "adequate" tolerance limitation and an "adequate" learning period. The American Cotton Manufacturers Institute recommended the continuation of the present 3 percent tolerance and the learning period presently provided and that the learner rate should have approximately the same relationship to the prevailing minimum wages as contained in the present determination. No other party made any recommendation with respect to the need for learners.

On the basis of the record, I find that a provision for the employment of learners at subminimum rates should be provided and that the present 3 percent tolerance and learning period for the activities for which the employment of learners at subminimum rates is presently permitted should be continued. I also find that this subminimum rate should reflect the same percentage differential as has previously existed between the industry minimum wage and the learner

subminimum wage, namely 8 percent. Accordingly, I find that the wage rate of 92 cents an hour is an appropriate subminimum wage for learners in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

No testimony was introduced at the hearing regarding the need for a subminimum rate covering the employment of apprentices. The present determination does not make any provision for the employment of apprentices at subminimum rates. I find that there is no need for a special provision covering the employment of apprentices.

Handicapped Workers

The regulations permit employment of handicapped workers at subminimum rates on contract work under the Act and this authority was not at issue in the proceedings. It appears advisable to include in the determination, however, specific authorization for such employment.

Fringe Benefits

The Textile Workers' Union of America recommended that a cost-of-living provision be included in the determination reflecting that provided for in its collective bargaining agreements. The United Textile Workers of America recommended the cost-of-living provision and, in addition, all fringe benefits covered in its contracts. The independent Fall River unions supported the recommendation of the Textile Workers Union of America. None of the other parties took a position with respect to these fringe benefits.

No determination issued under the Act provides for cost-of-living increases, shift differentials, paid holidays, insurance or pension plans or any other similar benefits. Provisions of the type listed above would be administratively cumbersome, and for some of them proper enforcement would be impossible. Moreover, there is considerable legal question as to whether such provisions are truly a part of prevailing minimum wages. For these reasons, I conclude that the determination should not contain provisions relating to these fringe benefits.

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Assertion of Bias

Following the hearing in this matter a document entitled "Affidavit of Personal Bias or Disqualification of Officers Participating in Decisions" was addressed to me by W. Glen Harlan, attorney for a group of cotton manufacturing companies who were parties to the proceeding. This document asserted that I had prejudged the issue as to a nation-wide minimum wage in this industry, and further that I and other officials of the Department of Labor have in various ways indicated a prejudice as to the wage to be recognized in the industry. The document accordingly requested that I and such other officials of the Department be disqualified to act further in this matter or participate in any decisions to be rendered herein.

The question of bias was initially raised at the hearing by Mr. Harlan and he at that time requested that certain files of the Department of Labor be produced for the purpose of ascertaining whether they contained any evidence to support a charge of bias. A similar request was submitted to me on two separate occasions following the hearing. In each instance I denied the request on the ground that the material requested had no relevance to the proceeding. My ruling in this regard was based upon two primary considerations, first, that the decision which I am required to make in this proceeding must be based solely upon the record, and, consequently, the record should contain only data which relates to the subject matter of the proceeding, namely, prevailing minimum wages in the Textile Industry; secondly, it is my view that the assertion of a captious or frivolous challenge for the bias does not warrant a wholesale disclosure of material in the Department files.

It is my duty under the law to make an objective decision based upon all of the evidence and data in the record. I have endeavored to arrive at such a decision with due regard to the purposes of the Act and my obligations as an administrative officer of the United States. It is my belief and conviction that all other individuals in the Department

of Labor who participated in any way in this proceeding have been similarly guided. I therefore find that the assertion of bias submitted herein is completely without merit.

Proposed Decision

Notice is hereby given that, in accordance with all of the considerations expressed herein, I propose to issue a decision in this matter as set forth below. Interested parties may submit, within 15 days from publication of this proposed decision in the Federal Register any exceptions to the proposed decision or any data intended either in rebuttal or in support of any of the tabulations or data received as part of the record following the close of the hearing.

"The minimum wage determination for the Textile Industry contained in section 202.43 of this part (Title 41 Code of Federal Regulations, part 202) is amended as follows:

1. Subsection 202.43(b) is amended to read as follows:

"(b) *Minimum wage.* (1) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or
318 piece-rate basis. The Cotton, Silk, and Synthetic Textile Branch includes the manufacturing, processing, bleaching, dyeing, printing or other finishing of any of the folowing items which are within the scope of the Textile Industry, as defined herein, and are made primarily of cotton, silk or synthetic fiber or mixtures of these fibers: yarn; thread; broad-woven fabrics (more than 12 inches in width); sheets and pillow cases; towels; and wash cloths and scrubbing cloths.

(2) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry,

under contracts subject to the Walsh-Healey Public Contracts Act shall be 87 cents an hour, arrived at either on a time or piece-rate basis."

2. Subsection 202.43(c) is amended to read as follows:

"(c) *Subminimum wages authorized:* (1) Learners may be employed subject to the following terms and conditions:

(i) Learners may be employed in the occupations of machine operating, machine tending, machine fixing, and jobs immediately incidental thereto;

(ii) In the performance of contracts for the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry learners may be paid a subminimum rate of 92 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and earnings, based upon those piece rates, if such earnings are in excess of 92 cents an hour. In the performance of contracts for products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, learners may be paid a subminimum rate of 80 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece-rates paid to experienced workers and earnings, based upon these piece-rates, if such earnings are in excess of 80 cents an hour;

(iii) The length of the learning period shall be 240 hours unless the learner has had previous experience in the industry in which case the number of such experience must be deducted from the 240 hour learning period.

(iv) The number of learners may not exceed 3 percent of the total number of machine operators, machine plication to the Administrator of the Wage and Hour

and Public Contracts Divisions or his authorized representative, a special certificate has been issued authorizing employment of learners in excess of 3 percent to meet a plant's abnormal situation created by establishment of new plants, expansion of production or plant facilities, and the like. Such special certificates will not be issued where it appears that experienced workers are available to the employer within the area from which he customarily draws his supply of labor, or that the issue of a special certificate will create unfair competitive labor cost advantages, or will impair or depress working standards established for experienced workers for work of a like or comparable character in the industry.

(2) Handicapped workers may be employed at wages below the applicable minimum wages specified herein upon the same terms and conditions as are prescribed for the employment of handicapped workers by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (29 CFR Parts 524, and 525, respectively), under section 14 of the Fair Labor Standards Act as amended.

The Administrator of the Public Contracts Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped workers not subject to different acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act."

Signed at Washington, D. C. this 5th day of December, 1952. Maurice J. Tobin, Secretary of Labor.

Published in Federal Register December 11, 1952.

[NOTE:

Order upon oral motion substituting Martin P. Durkin, Secretary of Labor, as defendant, was entered on February 5, 1953.

Motion for stay and preliminary injunction filed February 6, 1953.

Motion to dismiss based on failure to allege facts establishing jurisdiction and on failure to state a claim on which relief could be granted, filed by the defendant, Secretary of Labor, on February 12, 1953.]

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Filed Feb 16, 1953)

COVINGTON MILLS, et al.,
Plaintiffs,

vs.

MARTIN P. DURKIN,
Secretary of Labor,
Defendant.

Civil Action No. 259-53

Amendment To Complaint for Declaratory Judgment and Injunctive Relief

Come now the plaintiffs in the above entitled action and amend the Complaint for Declaratory Judgment and Injunctive Relief, as follows:

Paragraph II of said Complaint is amended by adding at the end thereof the following:

Some of these plaintiffs have in the past bid upon and obtained contracts with the United States Government which were subject to the Walsh-Healey Act and to wage determinations thereunder; and some of these plaintiffs plan and expect in the immediate future to bid for and obtain contracts which plaintiffs expect to be offered by Government agencies, and which would be subject to the purported wage determination herein complained of unless said determination is set aside; and all of these plaintiffs desire to be eli-

gible for such contracts and plan to bid for such contracts when the proper occasion presents itself. If the said purported determination is not set aside, all of these plaintiffs will be seriously and irreparably injured either (1) because their minimum wage is less than the minimum prescribed in said purported determination and therefore the Government contracting officers will not award such plaintiffs the profitable contracts which plaintiffs expect to be offered; or (2) because they or their competitors will raise wages to
453 comply with said prescribed minimum, and in either event plaintiff's wage costs will be increased and their profits from both Government and commercial business will be decreased. By reason of the foregoing and other matters, plaintiffs are aggrieved and their interests are adversely affected by said purported determination. This action involves an amount in excess of $3,000.00, exclusive of interest and costs.

GAMBRELL, HARLAN, BARWICK, RUSSELL & SMITH

By W. Glen Harlan, 825 Citizens & Southern National Bank Building, Atlanta 3, Georgia

McKENNEY, FLANNERY & CRAIGHILL
By G. B. Craighill, Jr., 901 Hibbs Building
Washington 5, D. C.
Attorneys for Plaintiffs

Service of a copy of the foregoing Amendment to Complaint is acknowledged this 16th day of February, 1953.

408 (Filed February 13, 1953)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

COVINGTON MILLS, et al.,
Plaintiffs,

vs.

MAURICE J. TOBIN,
Secretary of Labor
Defendant.

Civil Action No. 259-53

Affidavit

STATE OF MASSACHUSETTS } SS
COUNTY OF SUFFOLK }

Maurice J. Tobin, being duly sworn, deposes and says:

During all times mentioned in the complaint herein, he was The Secretary of Labor of the United States.

Under the terms of the Act referred to as the Walsh-Healey Public Contracts Act, affiant, as Secretary of Labor was charged with the duty, and vested with the authority and discretion of determining prevailing minimum wages for persons employed in industries engaged in the performance of contracts with agencies of the United States Government subject to such Act.

On November 16, 1948, affiant's determination of the minimum prevailing wage in the Textile Industry became effective. Thereafter, many persons and representatives of both employers and labor urged upon affiant the necessity for revision in such determination, due to changed economic circumstances reflected in nationwide increase in industrial wages, including the Textile Industry.

On January 23, 1952, the Textile Workers Union (CIO), and on March 4, 1952, the Textile Workers Union (A.F. of L.), filed petitions with affiant for determination by him of minimum wages in the Textile Industry of $1.135 and $1.13 an hour, respectively.

409 Representations in these petitions cast substantial doubt that the 87 cent per hour rate then prevailed throughout the Industry. Wage data provided the Department of Labor by textile manufacturing establishments and associations from time to time, granted support to such doubts as to the prevailing nature of the then determined minimum wage. In accord with previous procedure, an informal panel discussion was held on March 4, 1952, between representatives of the Department of Labor and representatives of management and labor in the Textile Industry to discuss various matters concerned with the wage determination, a hearing to procure factual data on industry wages, a definition of the Industry and subjects relevant to a proposed inquiry.

Subsequently, a notice of hearing on September 4, 1952, was published in the Federal Register July 26, 1952. Copies of the notice were served on individual members of the Industry, trade associations and labor organizations. An appropriate press release was issued to the general press and industry publications. A change in the hearing date to September 3rd was published in the Federal Register August 8, 1952, and also given distribution similar to the original notice.

The hearing was held on September 3, 4 and 5, and the record held open for the receipt of evidence, data, statements and briefs until October 29, 1952.

On December 5, 1952, affiant issued a proposed or tentative decision in the matter which was served on the various parties and published in the Federal Register December 11, 1952. The notice of such proposed decision provided that interested parties were afforded fifteen (15) days from the publication of such decision in the Federal Register within which to submit any exceptions thereto or any data intended either in rebuttal or in support of any of the tabulations or data received as part of the record following the close of the hearing.

410 On January 5, 1953, a motion for further hearing and for oral argument was submitted by an attorney

for thirty-four (34) cotton textile mills and a similar motion was filed on behalf of thirty-seven (37) cotton manufacturing companies, parties to the proceeding, and dated January 7, 1953. Affiant denied this motion on January 12, 1953. A copy of the order denying such motions is attached to the complaint and marked Exhibit B, and is self-explanatory.

After enlarging to January 10, 1953, the period within which interested parties might submit exceptions to the proposed decision or any additional data, affiant issued his minimum wage determinations amending the existing determination of the prevailing minimum wage for the Textile Industry, such determinations to become effective February 21, 1953.

All matters preliminary to the hearing above-mentioned, the hearing itself, and matters subsequent thereto, were conducted with full regard to the rights of all interested parties.

During the relatively lengthy period in which the matter was active, affiant as Secretary of Labor, and as a public servant, necessarily had to make himself available to the public at large in many and various matters concerned with or related to wages, working conditions and other subjects relating to labor matters. Members of industry, labor organizations, the general public, and other were seen by, and discussed many subjects with affiant. This was in accord with his duties as Secretary of Labor of the United States. In arriving at a determination of the prevailing minimum wages in the Textile Industry, which are the subject of this suit, affiant reached his decision by referring solely to the record as made and the exceptions, objections, argument, statements and briefs of the parties in the course of such proceeding. As the record will disclose, the matter 411 was one of factual complexity and difficulty. After weighing all factors without bias or prejudice, affiant came to his decision embodied in the outstanding order which is the subject of this suit.

It was affiant's duty under the law to make an objective decision based upon all of the facts and data in the record.

Affiant arrived at his decision with due regard to the purposes of the Act and his obligations as administrative officer of the United States. It is his belief and conviction that all other individuals in the Department of Labor who participated in any way in this proceeding had been similarly guided. Considering the substantial range with respect to minimum wages contained in the record, it is at once apparent that the rate of $1.00 per hour established by the outstanding amendatory order is neither arbitrary nor unreasonable and fully supported by the substantial evidence. The rate determined in view of such facts of record is complete proof of the absence of bias or prejudice on the part of your deponent in arriving at such findings. The assertions of bias submitted by plaintiffs are frivolous, conjectural and without substance.

[Jurat] /s/ Maurice J. Tobin, Maurice J. Tobin

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Filed February 13, 1953)

COVINGTON MILLS, et al.,
Plaintiffs,

vs.

MARTIN P. DURKIN,
Secretary of Labor
Defendant.

} Civil Action No. 259-53

Affidavit

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA } ss:

Norris B. Sacharoff, being duly sworn, deposes and says:

He is Chief of the Branch of Public Contracts Wage Determinations in the Division of Wage Determinations of

the Wage and Hour and Public Contracts Divisions, United States Department of Labor.

The attachment hereto designated Appendix 1 is the mailing list for announcement of the panel meeting for the Textile Industry which was prepared in the course of his employment and under his direction and control.

The attachment hereto designated Appendix 2 is a true copy of the form letter of announcement of such panel meeting which was mailed to each of the persons listed in Appendix 1.

The attachment hereto designated Appendix 3 is the roster of persons who attended the panel meeting for the Textile Industry on March 4, 1952.

The attachment hereto designated Appendix 4 is a narrative report of the deliberations at the panel meeting referred to which was prepared for the information of the
413 Deputy Administrator under affiant's direction and control.

Affiant was in attendance throughout said panel meeting and affirms that no person present requested or suggested the collection or tabulation of wage data on the basis of communities, counties or other small area; and no person present requested or suggested any change in the currently effective definition of the Textile Industry by reason of the open market purchase exemption in section 9 of the Walsh-Healey Act.

[Jurat] /s/ NORRIS B. SACHAROFF.

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Appendix 1

TEXTILE INDUSTRY MAILING LIST FOR ANNOUNCEMENT OF PANEL MEETING

Mr. Basil D. Browder,
Vice President
Dan River Mills, Incorporated
Danville, Virginia

Mr. C. C. Caffrey
The American Cotton Manufacturers Institute of America, Inc.
725-A Cafritz Building
1625 I Street, N.W.
Washington 6, D. C.

Mr. E. O. Fitzsimmons
Executive Vice-President & Treasurer
The Carded Yarn Association, Inc.
408 Johnston Building
Charlotte, North Carolina

Mr. J. L. Jennings
Executive Vice-President
The West Point Manufacturing Co.
Lanett, Alabama

Mr. Henry W. Swift
Executive Vice-President
Swift Spinning Mills
Columbus, Georgia

Mr. F. S. Love
Secretary-Treasurer
The American Cotton Mfgrs. Institute, Inc.
203-A Liberty Life Building
Charlotte, North Carolina

Mr. T. M. Forbes
Executive Vice-President
Cotton Manufacturers Association of Georgia
Atlanta, Georgia

Mr. John F. Toole, Jr.
Director of Personnel
J. P. Stevens and Company, Inc.
Greenville, South Carolina

Mr. Cole M. Robinson
President and Treasurer
United Spinners Corporation
Lowell, North Carolina

Mr. Carl P. Harris, Vice-President
Edwin Mills, Incorporated
Durham, North Carolina

Mr. Joe W. Jelke
Director of Industrial Relations
Riegel Textile Corporation
Ware Shoals, South Carolina

Mr. H. A. Burow, Manager
Bonham Cotton Mills
Bonham, Texas

Mr. Halbert M. Jones, President
Waverly Mills, Incorporated
Laurinburg, North Carolina

Mr. Robert C. Jackson
Executive Vice-President
The American Cotton Mfgrs. Institute, Inc.
725-A Cafritz Building
1625 I Street, N.W.
Washington 6, D. C.

Mr. Emil Rieve, President
Textile Workers Union of America, CIO.
99 University Place
New York 3, New York

Mr. William W. Allan
Vice-President and Treasurer
Baltic Mills Company
Baltic, Connecticut

Mr. Malcolm G. Chace, Jr., President
Berkshire Fine Spinning Associates, Inc.
Turks Head Building
Providence, Rhode Island

Mr. Seabury Stanton, President
Hathaway Manufacturing Company
New Bedford, Massachusetts

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Mr. Anthony Valente, President
United Textile Workers of America, AFL.
818-13th Street, N.W.
Washington 5, D. C.

Mr. Joseph L. Miller, Representative
National Association of Cotton Manufacturers
521 Standard Oil Building
Washington 1, D. C.

Mr. William F. Sullivan, President
National Association of Cotton Manufacturers
80 Federal Street
Boston, Massachusetts

Mr. Herman D. Rulm, Jr., President
Bates Manufacturing Company
Lewiston, Maine

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Appendix 2

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON 25, D. C.

Office of the
Administrator

February 27, 1952

Under the Walsh-Healey Public Contracts Act the Department of Labor has the responsibility of determining the minimum wages that must be paid by employers having contracts with the Federal Government in excess of $10,000. In this connection, I am planning to hold a public hearing within the next few months with the view of amending the determination for the

However, before making final arrangements for the hearing, I am asking a group of employer and labor representatives who are familiar with the problems of the industry to meet as members of an informal panel in advance of the hearing to discuss with certain members of my own staff the various problems arising in this connection. Inasmuch as any determination must be made on the basis of the prevailing minimum wages actually being paid in the industry, the panel will be asked to advise the Divisions as to how the necessary data may best be obtained for the subsequent hearing. I should also like to have the panel's counsel respecting the retention or modification of the present industry definition in the light of the present structure of the industry and Government purchasing requirements.

I am extending an invitation to you, or to a representative whom you may designate in your stead, to attend this panel conference which is scheduled for March 4, 1952 at 10:00 o'clock. The meeting will be held in Room 5406, Department of Labor Building, 14th Street and Constitution Avenue, N.W., Washington, D. C.

As general background reference material, I am enclosing a copy of the Rulings and Interpretations issued under the Public Contracts Act, which contains the text of the Act on pages 47-51. I am also enclosing a copy of the wage determination for the industry, which has been amended to require the payment of not less than 75 cents an hour for work on contracts awarded on or after January 25, 1950.

I sincerely hope you will be able to attend the conference and give me the benefit of your suggestions and advice.

Very truly yours,

WM. R. MCCOMB
Administrator

Enclosures

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Appendix 3

PANEL MEETING
TEXTILE INDUSTRY
MARCH 4, 1952

U. S. Department of Labor
Wage and Hour and Public Contracts Divisions
Wage Determination Branch

Mr. Robert G. Gronewald
Mr. Norris B. Sacharoff
Mr. Norman W. Engelman
Mrs. Sophie R. Carsel
Mr. Howard Solomon
Mr. Willard Brown

Bureau of Labor Statistics

Mr. Charles Rubenstein

Office of Solicitor

Mrs. Dovey Roundtree

Bureau of the Budget

Mr. Dana Barbour

INDUSTRY REPRESENTATIVES

Mr. Henry W. Swift, President
Cotton Manufacturers Association of Georgia
Post Office Box 1120
Columbus, Georgia

Mr. William F. Sullivan, President
National Association of Cotton Manufacturers
80 Federal Street
Boston, Massachusetts

Mr. Seabury Stanton, President & Treasurer
Hathaway Manufacturing Company
New Bedford, Massachusetts

Mr. William A. W. Sibley
American Cotton Manufacturers Institute
Union, South Carolina

Mr. Coit M. Robinson, President
United Spinners Corporation
Lowell, North Carolina

Mr. Joe L. Jennings, Executive Vice-President
West Point Manufacturing Company
Lanett, Alabama

Mr. J. W. Jelks, Personnel Director
Riegel Textile Corporation
Ware Shoals, South Carolina

Mr. Joseph L. Miller, Washington Representative
National Association of Cotton Manufacturers
521 Standard Oil Building
Washington, D. C.

Mr. E. S. McKissick
Alice Manufacturing Company
Easley, South Carolina

Mr. F. S. Love, Secretary & Treasurer
American Cotton Manufacturers Institute
203-A Liberty Life Building
Charlotte, North Carolina

Mr. Louis F. Laun
Assistant to President for Industrial Relations—Bates Mfg. Co.
Post Office Box 259
Lewiston, Maine

Mr. Halbert M. Jones, President
Waverly Mills, Inc.
Laurinburg, North Carolina

Mr. T. M. Forbes, Executive Vice-President
Cotton Manufacturers Association of Georgia
740 Citz. & Sov. National Bank Building
Atlanta 3, Georgia

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Mr. Robert C. Jackson, Executive Vice-President
American Cotton Manufacturers Institute
1625 Eye Street N.W.
Washington, D. C.

Mr. Malcolm G. Chace, Jr., President
Berkshire Fine Spinning Association, Inc.
Turbs Head Building
Providence, Rhode Island

Mr. Thomas N. Ingram
American Cotton Manufacturers Institute
Charlotte, North Carolina

Mr. C. G. Caffrey, Washington Representative
American Cotton Manufacturers Institute
1625 I Street N.W.
Washington, D. C.

Mr. Charles C. Hertwig, President
American Cotton Manufacturing Institute
Charlotte, North Carolina

Mr. H. A. Burow, Manager
Bonham Cotton Hills
Bonham, Texas

Mr. Carl R. Harris, Vice President & Assistant Treasurer
Erwin Mills
Durham, North Carolina

Mr. Basil D. Browder, Vice President
Dan River Mills, Inc.
Danville, Virginia

Mr. John E. Toole, Jr.
Director of Personnel
J. P. Stevens Company
Greenville, South Carolina

LABOR REPRESENTATIVES

Mr. Frank Gorman, International Representative
United Textile Workers of America, AFL
818 13th Street N.W.
Washington, D. C.

Mr. Mariano S. Bishop, Cotton and Rayon Director
Textile Workers of America, CIO
99 University Place
New York 3, New York

Mr. Larry Gonder
Public Relations Director
United Textile Workers, AFL
818 13th Street N.W.
Washington, D. C.

Mr. Solomon Barkin, Director of Research
Textile Workers Union of America, CIO
99 University Place
New York 3, New York

419.

Appendix 4

WD:NBS:ILA
3-5-52

Mr. F. Granville Grimes, Jr.
Acting Administrator
Verl E. Roberts
Assistant Administrator
Panel Meeting for the Textile Industry

In accordance with previous announcements, the panel meeting in the matter of the redetermination of the prevailing minimum wages in the Textile Industry was held yesterday, March 4. Industry was represented by the manufacturers who are members of the American Cotton Manufacturers Institute, the overwhelming majority of which are located in the southern states, and northern manufacturers who are members of the National Association of Cotton Manufacturers. Labor Spokesmen were present from the

Textile Workers Union of America, CIO, and the United Textile Workers, AFL.

The proceedings were announced by the Secretary after considerable interest relating to the Textile Industry had been expressed by northern manufacturers and Representatives and Senators from northern states. At the present time, about 80 percent of the industry is located in the South and wage rates there range upto $1.03½ an hour. The northern contract rate calls for a minimum of $1.13½, plus cost of living clauses, and additional benefits such as vacations with pay, shift differentials, and a certain number of paid holidays.

A petition was received from the Textile Workers of America requesting the Secretary to set a prevailing minimum wage of $1.13½, and providing for an escalator clause which would increase the rate 1 cent for every 1.32 percent increase in the Consumer's Price Index (old series) issued by the Bureau of Labor Statistics. At the opening of the panel meeting, the representatives of the United Textile Workers also presented a petition calling for a prevailing minimum rate of $1.13½, and a cost-of-living escalator clause. In addition the petition asks that the Secretary incorporate in the determination certain fringe benefits.

The question of the definition of the industry was gone into in some detail, particularly in connection with the request of the National Association of Wool Manufacturers, at the time of the panel meeting for the Woolen and Worsted Industry, for a change in the dividing line between the Woolen and Worsted Industry and the Textile Industry broadening the scope of the Woolen and Worsted Industry. As was indicated in informal conversations, all of the interested parties in the Textile Industry, both unions and employers, strongly objected to such a change in the definition. The Textile Industry panel members feel that all products now covered in the Textile Industry definition should be retained within that definition.

In conjection with the question of what type of wage data

should be available for consideration by the Secretary at the hearing, it appeared clear that none of the parties favored the Department's making a survey of the Industry. Each of the parties feels that it is sufficient that the Department give notice that the hearing will be held and each party plans to obtain such economic data about the Industry as it feels it will need to support its case. Both of the trade
420 associations have engaged outside economists. While there was general agreement as to what type of data will be necessary, there was a question as to how long it would be able to obtain their materials in about a month. The two unions also indicated that they would be ready in a very short time. The American Cotton Manufacturers Institute was not in a position, in the absence of its economist, to estimate the precise time necessary, but did indicate that the tabulation could not be ready before the end of May. However, this point was not finally decided and the Association will get in touch with the Divisions after further exploration.

The Government representatives indicated a desire to hold a hearing late in May or early in June at the latest.

In the course of the panel meeting, reference was made to an impending survey of the Industry to be made by the Bureau of Labor Statistics as part of its regular schedule. The best information now available indicates that the survey will start on March 24 for the cotton branch, and that tabulations may be expected in June and July. The survey for the synthetic branch will begin in April and tabulations will likewise be ready in June or July. Although these cotton and synthetic segments to be surveyed by the Bureau of Labor Statistics make up the larger part of the present Textile Industry definition, a number of branches will not be covered such as narrow fabrics, cordage, pile goods, fabricated textile goods such as sheets and towels (unless made in textile mills), etc.

Despite the fact that these surveys are to be conducted by the Bureau, none of the parties felt that the hearing should be delayed or that the parties should not make their

own investigations in preparation for the hearing. It was pointed out that if a hearing was held in June, the Bureau of Labor Statistics survey would probably be available at least during the period that the record was still open for the filing of post-hearing briefs.

As matters now stand, we are still hoping to schedule the hearing in May or June but final arrangements will depend to a great extent on how quickly the southern manufacturers will be ready for the hearing. While the northern manufacturers did not think it is necessary to provide a period of as much as a month for the various parties to examine the wage data obtained by the other groups, the southern manufacturers stated that they believed that at least that time would be necessary.

[Note: Order denying motion to dismiss and granting stay and preliminary injunction entered February 19, 1953, appears at pp. 127-8 of this appendix, being identical in both causes.]

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491 (Filed April 20, 1953)

Answer

FIRST DEFENSE

1. Answering paragraph I of the complaint the defendant admits that the Determination and the order complained of were issued on the dates alleged. The Court is respectfully referred to the text of said Determination and said Order, copies of which are attached to the complaint as Exhibits A and B respectively, for the full meaning, purport and effect thereof. Except for the extent admitted by the foregoing the allegations of paragraph I are denied.

2. Answering paragraph II as amended, of the complaint, defendant admits that Section 10 of the Walsh-Healey Act contains, *inter alia*, the language quoted in said paragraph; that plaintiffs are manufacturers of cotton textile materials, supplies and articles, and that the said Determination of a minimum wage of $1.00 per hour will have applica-

tion to each contract in any amount exceeding $10,000 awarded by any agency of the United States for the manufacturing or furnishing only of the products of the Cotton, Silk, and Synthetic Branch of the Textile Industry, and that as to manufacturing or furnishing of all other products of the Textile Industry, a minimum wage of 87 cents per hour will be applicable. Defendant has no knowl-
492 edge or information sufficient to form a belief as to the truth of the allegations that some of the plaintiffs plan and expect to bid for and seek to obtain contracts if bids therefor are sought by agencies of the United States in the immediate future, or the allegations that all of the plaintiffs desire to be eligible and plan to bid for such contracts whenever they deem a proper occasion to present itself therefor. Defendant asserts and alleges upon information and belief that the following five plaintiffs, Covington Mills, Fastex, Inc., Mary-Leila Cotton Mills, Moultrie Cotton Mills, and Neunan Cotton Mills, have not received an unclassified Government contract subject to the Walsh-Healey Act since its effective date in 1936. Upon information and belief, defendant further asserts and alleges as to remaining five plaintiffs that in the same period Union Manufacturing Company has received only eight unclassified Government contracts subject to the Walsh-Healey Act, but that none of such contracts were subject to the Textile Wage Determination as calling for the production of sox, an article not within the scope of the said Determination. Defendant upon information and belief further asserts and alleges that Plaintiff Fulton Bag and Cotton Mills received eleven (11) contracts during the period 1950-1952, three (3) of which were not for products as to which the Textile Wage Determination was and is applisable, and that the remaining eight (8) contracts, all for the production of burlap bags or burlap tubing, were subject to the 87 cents per hour minimum wage previously in effect, and the production of which products remains within the scope of the 87 cents and not the $1.00 per hour rate under the amended Wage Determination complained of.

Upon information and belief, the defendant asserts and alleges that Plaintiff Jordon Mills, Inc., has not sought or received a Government contract since January 22, 1945. Upon information and belief, defendant further asserts and alleges that plaintiff Crown Mills in the period 1951-1952 received three (3) Government contracts subject to the Textile Wage Determination. Upon information and
493 belief, defendant further asserts and alleges that Plaintiff Mandeville Mills since the effective date of the Walsh-Healey Public Contracts Act has received only four (4) Government contracts, one (1) each in 1942, 1947, 1948 and 1952. These contracts were subject to the Textile Wage Determination in effect on such dates.

Upon information and belief, defendant denies that plaintiffs Mary-Leila Cotton Mills, Fulton Bag and Cotton Mills, and Crown Cotton Mills pay a minimum wage of less than the minimum prescribed in the said Determination complained of, and in truth and in fact the minimum wage paid by said plaintiffs to employees covered by the Walsh-Healey Public Contracts Act in the manufacture of goods under Government contracts, are: $1.03 per hour, $1.04 per hour and $1.035 per hour, respectively. Defendant has no knowledge or information sufficient to form a belief as to the minimum wages paid by remaining plaintiffs to their employees. Except to the extent admitted by the foregoing, the remaining allegations of paragraph II, as amended, are denied.

3. Answering paragraph III of the complaint the defendant admits the allegations therein. Defendant avers that the certified record of the proceedings resulting in the Determination complained of, which said record proximately will be filed by defendant in this action, speaks for itself and the Court is respectfully referred thereto for the full meaning and purport thereof as to the matters alleged.

4. Answering paragraph IV of the complaint the defendant denies each and every allegation therein.

5. Answering paragraph V of the complaint defendant admits that section 1(b) of the Walsh-Healey Public Contracts Act contains, *inter alia*, the excerpts quoted in said paragraph. Except to the extent admitted by the foregoing, the allegations of paragraph V are denied.

6. Answering paragraph VI of the complaint defendant admits that plaintiffs and others filed a motion for further hearing and that said motion was denied in the proceeding preliminary to the Determination complained of, as
494 appears by Exhibit B attached to the complaint to which the Court is respectfully referred for the full meaning, purport and effect thereof. Except to the extent admitted by the foregoing, the allegations of paragraph VI are denied.

7. Answering paragraph VII of the complaint, defendant admits his predecessor in office was requested to rule upon the "open market" exemption provided by Section 9 of the Walsh-Healey Act as alleged. Defendant alleges and asserts that long prior to the hearing upon the said Determination, the said "open market" exemption had been the subject of a Regulation promulgated as Article 2(a) of the Regulations prescribed by the Secretary of Labor under authority conferred upon him by Section 4 of the said Walsh-Healey Act. The meaning and effect of the said "open market" exemption on October 1, 1945, also had last been the subject of a ruling and interpretation promulgated by the Administrator of the Division of Public Contracts of the United States Department of Labor, and contained in Section 13 of Rulings and Interpretations No. 3. A copy of the aforesaid Regulations and Rulings and Interpretations is attached hereto as Exhibit 1. The aforesaid Article 2 of the Regulations and Section 13 of the Rulings and Interpretations with respect to the said "open market" exemption were at all times prior to, during, and after the said hearing in full force and effect, and available and known to plaintiffs herein. Defendant further alleges and asserts that no issue as to said exemption was properly

present in the proceedings before him. Except to the extent admitted by the foregoing the allegations of paragraph VII are denied.

8. Answering paragraph VIII of the complaint the defendant denies each and every allegation therein, and the Court is respectfully referred to the certified copy of the record of the said proceedings, hereinbefore referred to.

9. Answering paragraph IX of the complaint the defendant denies each and every allegation therein. Defendant further asserts and alleges that the proceedings resulting in the Determination complained of were
495 for the purpose of acting upon petitions received by defendant's predecessor requesting amendment of a duly effective and applicable minimum wage determination for the Textile Industry, which proceedings were initiated by the convening of a panel of members of the Industry, including representatives of the plaintiffs, members of Labor, and a representative of the Bureau of the Budget to discuss and agree upon the scope of the hearing, the definition of the issues therein, the preparation therefor and the time required by the parties, the requisite wage data and other evidence relative to the issues, the definition of the Industry, and other matters material to the subject matter of the hearing. The discussions of the said panel on the matters indicated, resulted in formulating decisions and agreements thereon which constituted the basis for the notice of hearing subsequently issued which notice duly informed all interested parties of the nature of the proceedings and the issues for determination.

10. Answering paragraph X of the complaint defendant admits that rules of procedure to be followed at the hearing were published on August 30, 1952, and that the hearing commenced on September 3, 1952. Except as admitted by the foregoing the allegations of paragraph X are denied.

11. Answering paragraph XI of the complaint defendant denies each and every allegation therein.

12. Answering paragraph XII of the complaint defendant denies each and every allegation therein.

13. Answering paragraph XIII of the complaint defendant denies each and every allegation therein.

14. Answering paragraph XIV of the complaint defendant admits that pursuant to the Determination complained of all agencies of the United States as described therein, on and after February 21, 1953, are required by section 1 of the Walsh-Healey Public Contracts Act and by Part I, Article 1 of the Regulations of the Secretary promulgated under said Act, to include a stipulation providing
496 payment, if applicable, of the $1.00 minimum rate in all contracts exceeding $10,000, awarded for the manufacture or furnishing of products of the Cotton, Silk and Synthetic Branch of the Textile Industry to be purchased by any agency of the United States. As to other products of the Industry, the applicable minimum wage so required to be paid, is 87 cents per hour. Except to the extent admitted by the foregoing the allegations of paragraph XIV are denied.

Second Defense

The Court is without jurisdiction of this action in that the complaint fails to allege facts presenting a case or controversy within the meaning of Article III, Sections 1a and 2 of the Constitution of the United States.

Third Defense

The Complaint fails to state a claim against defendant upon which relief can be granted.

Fourth Defense

The Court is without jurisdiction of this action in that the Complaint fails to allege rights of the plaintiffs, or any of them, arising under any Act of Congress regulating commerce.

Fifth Defense

The Court is without jurisdiction of this action in that the Complaint fails to allege facts showing that plaintiffs, or any of them, are persons "adversely affected or aggrieved" by any acts of the defendant in the premises within the meaning of Section 10(b) of the Walsh-Healey Public Contracts Act, as amended.

Sixth Defense

The Complaint fails to state a claim against Defendant in that plaintiffs have failed to show any legal right or legal interest entitling them to maintain this suit.

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Seventh Defense

The Complaint fails to state a claim against the defendant in that there is no allegation of facts to show an actual controversy within the meaning of the Declaratory Judgment Act (28 USC 2201).

Eighth Defense

The Complaint fails to state a claim against the defendant in that there is no allegation of facts to show that plaintiffs, or any of them, have suffered a legal wrong because of any action of the defendant.

Ninth Defense

The Complaint fails to state a claim against the defendant upon which relief may be granted in that there is no allegation of facts to show that the plaintiffs, or any of them, are threatened with, or are in danger of suffering, any immediate or irreparable damage or injury cognizable in equity.

TENTH DEFENSE

Plaintiffs have an adequate remedy at law with respect to all the matters alleged in the complaint.

ELEVENTH DEFENSE

The Amendment to the Determination of the Prevailing Wage for the Textile Industry, issued by defendant's predecessor January 15, 1953, and effective February 21, 1953, is valid and subsisting, and has been duly rendered and promulgated in accord with applicable law.

WHEREFORE, defendant prays that the preliminary injunction and order staying the operation of his Determination be vacated, that the complaint herein be dismissed, and that he recover his costs and disbursements herein.

498 /s/ WARREN E. BURGER
Assistant Attorney General.

/s/ EDWARD H. HICKEY
Attorney, Department of Justice

Of Counsel

/s/ JETER S. RAY
Acting Solicitor

/s/ JOHN J. BABE
Assistant Solicitor

/s/ JAMES M. MILLER
Attorney
United States Department of Labor

(Filed April 20, 1953) (no record page number)

I hereby certify that on April 20, 1953, a true copy of the within and foregoing Answer was personally delivered to

McKinney, Fleming and Craighill, and Llewellyn C. Thomas, Hibbs Building, Washington, D. C.

EDWARD H. HICKEY, Attorney
Department of Justice

447 (Filed Feb. 24, 1953)

Intervener's Answer

Intervener Textile Workers Union of America, CIO (hereinafter referred to as TWUA-CIO) an unincorporated association, with its headquarters in New York, New York, engaged in the representation of employees in the textile industry with respect to all matters relating to wages, hours, and working conditions, as provided for by the National Labor Relations Act, as amended, and the certified collective bargaining representative for the production and maintenance employees of plaintiffs Crown Cotton Mills of Dalton, Ga., and the Mary-Leila Cotton Mills, Inc., of Greensboro, Ga., answers the complaint herein as follows:

I

1. The allegations of Paragraph I of the complaint concerning the nature of this suit are admitted.

2. The allegations of Paragraph II of the complaint concerning the provisitions of Section 10 of the Walsh-Heealey Act, as amended, are admitted. It is also admitted that plaintiffs are manufacturers of cotton textile materials, supplies and articles and that the plaintiffs are in the industry to which the wage determination complained of is applicable. The allegation that the plaintiffs are entitled to judicial review of said wage determination and of the order denying further hearing and oral argument is denied.

The allegation in the amendment to Paragraph II of the complaint that the plaintiffs whose minimum wage is in excess of the minimum specified in the Secretary's determination will be injured by reason of said determination and

the allegation that the amount in controversy is in excess of $3000.00 are denied. On information and belief, all of the other allegations in the amendment to Paragraph II of the complaint are denied.

2. The allegations of Paragraph III of the complaint are admitted.

4. The allegations of Paragraph IV of the complaint are denied.

5. The allegations of Paragraph V of the complaint that the Walsh-Healey Act requires that a separate wage determination be made for each "locality" is denied. The allegation the United States Court of Appeals for the District of Columbia has held that the determination of the Secretary of Labor must be on the basis of small geographical units is denied.

6. Further answering the allegations of said
448 Paragraph V of the complaint, TWUA-CIO alleges that the Section 1(b) of the Walsh-Healey Act requires only that a determination be made for each "locality" where such determinations apply to "groups of industries" and that the Act does not require that a separate determination must be made for each "locality" where such determination is made for a particular industry or similar industries.

7. Further answering the allegations of Paragraph V of the complaint, TWUA-CIO alleges that even if the locality requirement be deemed applicable to the determination in this case, the nature of the industry here involved requires that the locality be defined as the entire United States.

8. Further answering the allegations concerning *Lukens Steel Co.* v. *Perkins* in Paragraph V of the complaint, TWUA-CIO alleges that said decision was in error, was reversed by the Supreme Court of the United States, and is applicable only to a determination by the Secretary of Labor made on a locality basis.

9. The allegations of Paragraph VI of the complaint are denied.

10. The allegation in Paragraph VII of the complaint

that the defendant did not rule upon the "open market" exemption is admitted but it is denied that the Secretary of Labor's failure to rule as requested by the plaintiffs was in any manner improper or irregular.

11. The allegation of Paragraph VIII of the complaint are denied.

12. The allegations of Paragraph IX of the complaint are denied.

13. The allegations of Paragraph X of the complaint are neither admitted nor denied. TWUA-CIO alleges that the actions of the defendant Secretary of Labor with respect to the publication of the rules of procedure under which the proceedings were to be conducted in no way prejudiced the legal rights of the plaintiffs in the conduct of the proceedings.

14. It is admitted that the defeendant Secretary failed to find that he and other officers who participated in the decision were biased and disqualified. All the other allegations of Paragraph XI of the complaint are denied.

15. It is admitted that the Secretary of Labor did not grant the further hearing requested by the plaintiff and others. All the other allegations in Paragraph XII of the complaint are denied.

16. The allegations of Paragraph XIII of the complaint are denied.

17. Answering the allegations of Paragraph XIV of the complaint, it is denied that if the defendant's decision and determination were permitted to become effective it would in any manner harm or otherwise injure the legal interests of the plaintiffs.

Further answering the allegations of said Para-
449 graph, TWUA-CIO alleges upon information and belief that none of the plaintiffs is substantially engaged in work under Government contracts and that none of the plaintiffs will be damaged to any material degree by any requirement made by Government contracting agencies as to the inclusion of a minimum rate of $1 in contracts for textiles. Intervening defendant TWUA-CIO further alleges

that some of the plaintiffs herein are presently obliged by contract with TWUA-CIO to pay a minimum wage in excess of $1.00 per hour and, on information and belief, that all of the plaintiffs are presently paying a minimum wage in excess of the applicable minimum specified in the defendant Secretary's determination or will pay such a minimum wage at the time at which they would be required to pay such rate under the terms of the defendant's determination.

II

Further answering the complaint herein, intervener TWUA-CIO affirmatively asserts as follows:

1. The plaintiffs are not persons adversely affected or aggrieved by the wage determination by the Secretary of Labor involved in this proceeding.

2. To the extent that Section 10 of the Walsh-Healey Act as amended by Public Law 429 [Ch. 530, Title III, Section 301, 82nd Congress, 2nd Session, June 30, 1952], 41 U.S.C., Section 43a purports, for purposes of authorizing the maintenance of suit, to define a person adversely affected or aggrieved by a wage determination of the Secretary of Labor as any manufacturer or dealer in the industry as to which such determination is made, whether or not such manufacturer would actually be affected by said determination, it is unconstitutional and void.

ARTHUR J. GOLDBERG
DAVID S. FELLER
718 Jackson Place, NW
Washington 6, D.C.

BENJAMIN WYLE
99 University Place
New York 3, New York

By DAVID E. FELLER
Attorneys for
Textile Workers Union of America, CIO

543 (Filed May 25, 1953)

Order

On reconsideration of the motion of the Textile Workers Union of America and on consideration of the motion of the National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company, it is by the Court this 25th day of May, 1953

ORDERED that the order of the Court heretofore entered denying the motion of the Textile Workers Union of America to intervene be and the same is hereby vacated and set aside and that said movant be and it is hereby authorized to intervene as a party to this action; and it is further ordered that the motion of the National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company be and it is hereby granted and that said movants are hereby permitted to intervene as parties to this action.

/s/ H. A. SCHWEINHAUT
United States District Judge

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544 (Filed June 5, 1953)

Order

Upon further consideration of the motion of National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company for leave to intervene in the above-captioned cause, granted by order of this Court of May 25, 1953, it is by the Court this 5th day of June, 1953

ORDERED that the proposed answer of the said intervenors, tendered with their motion for leave to intervene,

be, and it is hereby, considered and held to be the answer of the said intervenors to the complaint herein.

H. A. SCHWEINHAUT
United States District Judge

No objection:
LLEWELLYN C. THOMAS

For: Gambrell, Harlan, Barwick, Russell & Smith; W. Glen Harlan; McKenney, Flannery & Craighill, and Llewellyn C. Thomas, Attorneys for Plaintiffs.

D. B. MACGUINEAS.

For: Warren E. Burger, Edward H. Hickey, Donald B. MacGuineas, Ross O'Donoghue, William S. Tyson, John J. Babé and James M. Miller, Attorneys for Defendant Martin P. Durkin.

545 DAVID E. FELLER

For: Arthur J. Goldberg, David E. Feller and Benjamin Wyle, Attorneys for Textile Workers Union of America, C.I.O., Intervenor.

JOHN W. CRAGUN

For: Warren F. Farr, Ropes, Gray, Best, Coolidge & Rugg, Wilkinson Boyden, Cragun & Barker and John W. Cragun, Attorneys for National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company, Intervenors.

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546 (Filed June 8, 1953)

Answer of National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company, Intervenors.

National Association of Cotton Manufacturers, a corporation organized and existing under the laws of the Commonwealth of Massachusetts (hereinafter referred to as

the "Association"), Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company, having been permitted to intervene as parties defendant, answer the Complaint as follows (each numbered paragraph herein referring to the similarly numbered paragraph in the Complaint):

547 1. They admit the allegations of Paragraph I, as to the nature and scope of the relief sought by the plaintiffs.

2. With respect to the allegations of the first subparagraph of Paragraph II, they admit that the Complaint was filed pursuant to Section 10 of the Walsh-Healey Act, that that section contains, *inter alia*, the language quoted in said subparagraph, that the plaintiffs are manufacturers of cotton textiles which are from time to time purchased by the government and that they are in the industry to which the wage determination complained of is applicable.

With respect to the allegations of the second subparagraph of Paragraph II, added by amendment, they admit that some of the plaintiffs have in the past bid upon and obtained contracts with the United States Government which were subject to the Walsh-Healey Act and wage determinations thereunder. They have no knowledge or information sufficient to form a belief as to the truth of the allegations that some of the plaintiffs plan and expect to bid for and obtain contracts offered by government agencies; that all of the plaintiffs desire to be eligible for and plan to bid upon such contracts, that the minimum wages paid by all of the plaintiffs are less than the minimum prescribed in the challenged determination or that the plaintiffs or their competitors will raise wages to comply with said minimum and that their wage costs will be increased and their profits decreased thereby. They deny the remaining allegations of said subparagraph.

3. They admit the allegations of Paragraph III.

4. They deny the allegations of Paragraph IV.

5. They deny the allegations of Paragraph V, except that

they admit that Section 1(b) of the Walsh-Healey Act contains, *inter alia*, the language quoted in said paragraph. Further answering said Paragraph, they say that under
the Walsh-Healey Act the Secretary is empowered to
548 determine the prevailing minimum wage for "similar work" or "in a particular industry" without regard to any factor of locality; and, further, that in the textile industry the "locality" in which textiles are to be manufactured and furnished under government contracts necessarily comprises the entire area within which textile mills compete.

6. They deny the allegations of Paragraph VI, except that they admit that a Motion for Further Hearing and Oral Argument, filed on behalf of various cotton textile mills, was, as appears from Exhibit B attached to the Complaint, denied by defendant Secretary of Labor.

7. They admit that defendant Secretary of Labor failed to rule upon the "open market" exemption provided by Section 9 of the Walsh-Healey Act, but says that his refusal so to rule was proper and lawful because no issue as to said exemption was properly present in the proceedings before him and any question as to such exemption was a matter to be determined in separate proceedings held for that purpose.

8. They deny the allegations of Paragraph VIII.

9. They deny the allegations of Paragraph IX, and further answering say that said notice was adequate to inform all interested persons as to the issues of the proceedings.

10. They admit that defendant Secretary of Labor published the rules of procedure under which the proceedings were to be conducted on or about August 30, 1952, and say that such publication was adeqquate and proper.

11. They have no knowledge or information as to the allegations of Paragraph XI, other than the statement contained in defendant Secretary's Notice of Proposed Amendment to the Determination of the Prevailing Minimum Wage for the Textile Industry, which is attached as

Exhibit C to the Complaint, in which the Secretary states that he did consider the question of bias and prejudice raised by an attorney for a group of cotton manufacturing companies and rules that the assertion in said affidavit that defendant Secretary of Labor and other officers who participated in the decision were biased and disqualified was completely without merit.

12. They deny the allegations of Paragraph XII.

13. They deny the allegations of Paragraph XIII.

14. They admit that if the defendant's determination becomes effective, government contracting agencies will require the inclusion of the $1 minimum rate in contracts for textiles and will deny contracts to those refusing to include the $1 rate. They deny the remaining allegations of said paragraph.

WARREN F. FARR

ROPES, GRAY, BEST, COOLIDGE & RUGG
50 Federal Street
Boston 10, Mass.;

WILKINSON, BOYDEN, CRAGUN & BARKER
By JOHN W. CRAGUN
744 Jackson Place, N.W.,
Washington 6, D. C.
Telephone: NAtional 8-1114

Attorneys for National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company, Intervenors.

550 (Filed June 26, 1953)

Order

Upon further consideration of the motion of the Textile Workers Union of America for leave to intervene in the above-captioned cause, granted by order of this Court of May 25, 1953, it is by the Court this 26th day of June, 1953

ORDERED that the proposed answer of the said intervenors, tendered with their motion for leave to intervene, be, and it is hereby, considered and held to be filed as of this date as the answer of the said intervenor to the complaint herein.

H. A. SCHWEINHAUT
United States District Judge

No objection:

LLEWELLYN C. THOMAS
For: Gambrell, Harlan, Barwick, Russell & Smith; W. Glen Harlan; McKenney, Flannery & Craighill, and Llewellyn C. Thomas, Attorneys for Plaintiffs.

EDWARD H. HICKEY
For: Warren E. Burger, Edward H. Hickey, Donald B. MacGuineas, Charles M. Irelan, Ross O'Donoghue, William S. Tyson, John J. Babe and James M. Miller, Attorneys for Defendant Martin P. Durkin.

DAVID E. FELLER
For: Arthur J. Goldberg, David E. Feller and Benjamin Wyle, Attorneys for Textile Workers Union of America, C.I.O., Intervenor.

JOHN W. CRAGUN
For: Warren F. Farr, Ropes, Gray, Best, Coolidge & Rugg, Wilkinson Boyden, Cragun & Barker and John W. Cragun, Attorneys for National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company, Intervenors.

[NOTE:

Order upon oral motion substituting Lloyd A. Mashburn, Acting Secretary of Labor, as defendant, was entered on September 16, 1953.

Order upon oral motion substituting James P. Mitchell, Secretary of Labor, as defendant, was entered on December 1, 1953.

Order dismissing complaint as to plaintiffs Crown Cotton Mills and Mandeville Mills was entered on June 22, 1954, and order dismissing complaint as to plaintiff Fastex, Inc., and Newnan Cotton Mills was entered on September 28, 1954.

Further proceedings in Covington Mills et al. v. Mitchell appear at pp. 122 et seq. of this appendix, being identical in both causes.]

PART II—ALABAMA MILLS, INC., ET AL. v. MITCHELL

940 (Filed February 11, 1953)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 614-'53

Alabama Mills, Inc., Birmingham, Alabama; American Thread Company, New York, New York; American & Efird Mills, Inc., Mount Holly, North Carolina; Bamberg Textile Mills, Bamberg, South Carolina; Belle-Vue Manufacturing Company, Hillsboro, North Carolina; Bibb Manufacturing Company, Macon, Georgia; Bonham Cotton Mills, Bonham, Texas; Bonnie Cotton Mills, Inc., Kings Mountain, North Carolina; Brenham Cotton Mills, Inc., Brenham, Texas; Brown Manufacturing Company, Concord, North Carolina; Calhoun Mills, Calhoun Falls, South Carolina; Cannon Mills Company, Kannapolis, North Carolina; Carlton Yarn Mills, Inc., Cherryville,

North Carolina; Cedartown Yarn Mills, Inc., Cedartown, Georgia; Columbia Manufacturing Company, Ramseur, North Carolina; Columbus Manufacturing Company, Columbus, Georgia; Corsicana Cotton Mills, Corsicana, Texas; Denison Cotton Mill Company, Denison, Texas; Dixie Mills, Inc., LaGrange, Georgia; Drayton Mills, Spartanburg, South Carolina; Eastman Cotton Mills, Eastman, Georgia; Eastern Manufacturing Company, Selma, North Carolina; Elk Cotton Mills, Fayetteville, Tennessee; Gem Yarn Mills Company, Cornelius, North Carolina; Globe Mills Company, Mount Holly, North Carolina; Grantville Mills, Grantville, Georgia; Greenwood Mills, Greenwood, South Carolina; Guadalupe Valley Cotton Mills, Cuero, Texas; Hart Cotton Mills, Inc., Tarboro, North Carolina; Highland Park Manufacturing Company, Charlotte, North Carolina; Holt Williamson Manufacturing Company, Fayetteville, North Carolina; Inman Mills, Inman, South Carolina; Johnston Manufacturing Company, Charlotte, North Carolina; Johnston Mills Company, Charlotte, North Carolina; Judson Mills, Greenville, South Carolina; Manetta Mills, Lando, South Carolina; Mauney Mills, Inc., Kings Mountain, North Carolina; Mexia Textile Mills, Mexia, Texas; Monarch Mills, Union, South Carolina; Monroe Mills Company, Monroe, North Carolina; Naumkeag Steam Cotton Company, Salem, Massachusetts; Neely Mills, Inc., York, South Carolina; Nuway Spinning Company, Cherryville, North Carolina; Pacolet Manufacturing Company, Pacolet, South Carolina; Park Yarn Mills Company, Kings Mountain, North Carolina; Parkdale Mills, Inc., Gastonia, North Carolina; Patterson Mills Company, Roanoke Rapids, North Carolina; Pepperell Manufacturing Company, Boston, Massachusetts; Pickett Cotton Mills, Inc., High Point, North Carolina; F. W. Poe Manufacturing Company, Greenville, South Carolina; Postex Cotton Mills, Post Texas; Riverdale Mills, Inman, South Carolina; Roanoke Mills Company, Roanoke Rapids, North Carolina; Roberta Manufactur-

ing Company, Concord, North Carolina; Robinson
941 Mills, Inc., Gastonia, North Carolina; Rosemary Manufacturing Company, Roanoke Rapids, North Carolina; Sherman Manufacturing Company, Sherman, Texas; A. M. Smyre Manufacturing Company, Gastonia, North Carolina; Spartan Mills, Spartanburg, South Carolina; Spinners Processing Company, Spindale, North Carolina; Textiles Incorporated, Gastonia, North Carolina; Thomaston Cotton Mills, Thomaston, Georgia; Union Mills Company, Monroe, North Carolina; United Spinners Corporation, Lowell, North Carolina; Valdese Manufacturing Company, Valdese, North Carolina; Walton Cotton Mill Company, Monroe, Georgia; Waverly Braid Mills, Gastonia, North Carolina; West Point Manufacturing Company, West Point, Georgia; Worth Spinning Company, Stony Point, North Carolina; York Mills, Inc., York, South Carolina;

Plaintiffs

vs.

Martin P. Durkin, United States Secretary of Labor,

Defendant

Complaint for Declaratory Judgment and Injunctive Relief

The plaintiffs, complaining of the defendant, say and allege:

1. That the plaintiffs are corporations which are incorporated and doing business under and in accordance with the laws of various States of the United States, their respective principal addresses and places of business being as set forth above in the caption of this Complaint; and that their full residence addresses are as there set forth except in the case of those as to whom more detailed addresses are listed on Exhibit A attached hereto.

2. That the business in which each and all of the plaintiffs are engaged is that of manufacturing and selling textile products.

3. That the defendant, as the plaintiffs are informed and believe, is the duly appointed, qualified and acting Secretary of the United States Department of Labor.

4. That jurisdiction to entertain this cause and to grant the relief herein prayed for is conferred upon this Court by the following United States Statutes:—41 U.S.C. 43 (a); 5 U.S.C. 1009; and 28 U.S.C. 2201.

5. That on or about January 15, 1953, the then Secretary of Labor, defendant's immediate predecessor in office, purporting to act under Section 1 (b) of the Walsh-Healey or Public Contracts Act, 41 U.S.C. 35 (b), issued a "Notice of Amendment to the Determination of the Prevailing Minimum Wage for the Textile Industry" by which he ordered and decreed that:

942 "The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis".

6. That the aforesaid decree, order, determination or amendment of determination was beyond the authority of the Secretary of Labor and was, and is, unlawful in the following respects, namely:

(a) That Section 1 (b) of the Walsh-Healey or Public Contracts Act, 41 U.S.C. 35 (b), authories the Secretary of Labor to ascertain and declare what are the currently prevailing minimum wages in the various localities of the textile industry in the United States; but that the Secretary, exceeding and violating this authority, has undertaken in the aforesaid decree or determination to name and set a single nation-wide

minimum wage for the textile industry of the United States as a whole.

(b) That the Secretary of Labor in the said decree or determination has "found" and announced that a single amount prevails as a minimum wage throughout all the textile industry of the United States, whereas the facts, and the facts before the Secretary, completely fail to support any such finding but on the other hand establish overwhelmingly that there is no single amount which prevails as a minimum wage throughout all the textile industry of the United States and in all the localities of the textile industry.

(c) That the Secretary of Labor in the said decree or determination has "found" and announced that $1.00 per hour prevails as a minimum wage throughout all the textile industry of the United States, whereas, as stated above, the facts, and the facts before the Secretary, completely fail to support any such finding but on the other hand establish overwhelmingly that no single amount, and specifically not $1.00 per hour, prevails as a minimum wage throughout all the textile industry of the United States and in all the localities of the textile industry.

(d) That the Secretary's aforesaid decree or determination should state but fails to state that it applies in any event only to such products of the textile industry as may not "usually be bought in the open market", the provisions of Section 9 of the Walsh-Healey or Public Contracts Act, 41 U. S. C. 44, being clearly to such effect, a prior regulation or interpretation of the Department of Labor to the contrary notwithstanding.

943 (e) That prior to his issuance of the aforesaid decree or determination the Secretary, through an Agent or Examiner, conducted a proceeding, and, during the course of the proceeding, a hearing at which sundry evidence and argument was adduced and

made a matter of record both by the Department of Labor and by parties interested in the subject of prevailing minimum wages in the textile industry; but that the Secretary did not, as required by law, either at the initiation of said proceeding or any time during the pendency thereof, notify or inform interested parties as to the issues which would, and the issues which eventually did, control and shape his decree of determination.

(f) That the Secretary did not, as required by law, within proper time prior to the initiation of the aforesaid proceeding state and publish the procedures which would govern the said proceeding and the development thereof.

(g) That the Secretary admitted into the record of the aforesaid proceeding, after the aforesaid hearing and after the said record had been closed, various tabulations and other statistical evidence as to which the interested parties had had and have yet had no opportunity of cross-examination whatever.

(h) That the Secretary's aforesaid decree or determination is based in substantial part upon the improperly admitted evidence which is referred to in the preceding paragraph.

(i) That parties interested in the aforesaid proceeding, during the pendency thereof, filed with the Secretary, responsible affidavits setting forth in detail statements made by the Secretary, and various agents and representatives of his, of such effect as to indicate a preconceived judgment on the subject matter of the proceeding and to preclude an impartial evaluation of the evidence adduced in the proceeding; but that the Secretary refused to give consideration to the subject of these affidavits and further refused to disclose material in his files relating to the subject of such affidavits.

7. That by reason of each and all of the matters set forth in the paragraphs "a" through "i" above, the details of

which will be fully presented to the Court, the aforesaid decree or determination which the Secretary of Labor has issued is unlawful and should not be allowed to become effective.

944 8. That the plaintiffs and other parties to the aforesaid proceeding, during the pendency thereof, brought all of the foregoing considerations to the attention of the Secretary of Labor and urged them upon him; but that the Secretary disregarded or overruled them all and issued the decree or determination which is hereinabove referred to, and announced that it should go into effect on February 21, 1953.

9. That the plaintiffs and each of them are adversely affected and aggrieved by the aforesaid decree or determination of the Secretary of Labor and will be irreparably injured and damaged if it is allowed to go into effect; that, as the plaintiffs are informed and believe, various purchasing agencies of the United States Government will shortly desire to purchase textile products such as the plaintiffs manufacture and will solicit from the plaintiffs bids for the manufacture and supply of such products; that numerous of the plaintiffs are, however, not complying and cannot without prohibitive cost comply with the terms of the aforesaid unlawful decree or determination which the Secretary of Labor has issued and that, in the absence of such compliance, the aforesaid purchasing agencies of the United States Government cannot and will not purchase from the said plaintiffs nor accept bids to manufacture and supply textile products from the said plaintiffs; that moreover all of the plaintiffs will be irreparably injured and damaged if the Secretary's aforesaid decree or determination should go into effect, in that they would thereby be forced through an unlawful means into greater competition for labor in their respective areas of operation—for all of which the plaintiffs would have no redress or recovery whatever.

WHEREFORE, the plaintiffs pray the Court:

That the defendant be directed to certify and transmit to this Court the entire record in the proceeding above referred to in order that this Court may fully review the same.

That judgment be entered declaring the aforesaid decree or determination of the Secretary of Labor to be unlawful and void.

That the defendant, and his agents and representatives and successors in office, be permanently restrained and enjoined from placing the aforesaid decree or determination into effect.

That pending a complete adjudication of this cause, the defendant, and his agents and representatives and successors in office, be temporarily restrained and enjoined from placing the aforesaid decree or determination into effect.

That the plaintiffs be granted such other and further relief as to the Court may seem just and proper.

945

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PIERCE AND BLAKENEY
By: WHITEFORD S. BLAKENEY
Johnson Building
Charlotte, North Carolina
Attorneys for the Plaintiffs

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946 EXHIBIT A

Alabama Mills, Inc., Birmingham 5, Alabama
American Thread Company, 260 West Broadway, New York 13, New York
Pepperell Manufacturing Company, 160 State Street, Boston, Massachusetts

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[NOTE: Motion for stay and preliminary injunction filed February 11, 1953.]

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990 Filed Feb 19, 1953

Order as to Joinder of Additional Parties Plaintiff

Upon oral motion of the plaintiffs that the Court add as additional plaintiffs herein such parties as may hereafter adopt the allegations of the complaint and the motion for stay and preliminary injunction, subject however to the motion to dismiss, affidavits, memoranda of law and arguments heretofore submitted by the defendant in this action, and the defendant not objecting to the said oral motion:

NOW THEREFORE, it is by the Court this the 19th day of February 1953, ORDERED that any such parties desiring to become plaintiffs herein shall file with the Clerk of this Court an appropriate motion, setting forth that they do desire to become joined as parties plaintiff herein and that they do adopt the allegations and prayers of the complaint and of the motion for stay and preliminary injunction herein, and shall cause a copy of such motion to be served upon the defendant; and thereupon they shall become and be for all purposes plaintiffs in this action and thereupon the stay and preliminary injunction and the findings of fact and conclusions of law in support thereof entered in this action shall become and be applicable to each such additional party plaintiff, the defendant reserving however all objections previously raised in the pleadings and affidavits filed by him in this action and the defendant likewise reserving such further objections as he may hereafter raise.

/s/ H. A. Schweinhaut, Judge

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993 Filed Feb. 20, 1953

Amendments to the Complaint

Now come the plaintiffs and amend the complaint in this cause as follows:

By changing paragraph 4 so that it shall read:

4. That the amount in controversy in this action exceeds the sum of $3,000.00, exclusive of interest and costs; and that jurisdiction to entertain this cause and to grant the relief herein prayed for is conferred upon this Court by the following United States Statutes: 41 U.S.C. 43(a); 5 U.S.C. 1009; and 28 U.S.C. 2201.

By changing paragraph 9 so that it shall read:

9. That the plaintiffs and each of them are adversely affected and aggrieved by the aforesaid decree or determination of the Secretary of Labor and will be irrepa-

rably injured and damaged if it is allowed to go into effect;

That, as the plaintiffs are informed and believe, various purchasing agencies of the United States Government will shortly desire to purchase textile products such as some of the plaintiffs manufacture, and
994 products embodying textile materials such as others of the plaintiffs manufacture, and will solicit bids for the manufacture and supply of such products;

That numerous of the plaintiffs are, however, not complying and cannot without prohibitive cost comply with the terms of the aforesaid decree or determination and, in the absence of such compliance, the aforesaid purchasing agencies of the United States Government cannot and will not purchase textile products manufactured by such plaintiffs nor products embodying textile materials manufactured by such plaintiffs;

That thus such plaintiffs will be barred from manufacturing textile products, and textile materials for products, to be purchased by the United States Government, unless they comply with the aforesaid decree or determination, and thereby greatly increase their operating costs;

That there are some of the plaintiffs which are now paying a minimum wage equal to or greater than that prescribed in the aforesaid decree or determination but which purchase textile materials from other companies having a minimum wage less than that prescribed in the said decree or determination; that some of such other companies will raise the price of said textile materials as a result of the aforesaid decree or determination bringing about increases in their operating costs and thereupon the costs of the plaintiffs who purchase such textile materials will be correspondingly increased, even though such plaintiffs are already, as stated
995 above, paying a minimum wage equal to or greater than that prescribed in the aforesaid decree or determination.

That if the aforesaid decree or determination goes into effect greater competition for labor in the textile industry will result and, in undertaking to meet such competition, the operating costs of all the plaintiffs will be greatly increased;

That if the aforesaid decree or determination goes into effect according to its terms on February 21, 1953, then the increases in the plaintiffs' operating costs, brought about in the ways outlined above, will take place while this cause, as the plaintiffs are informed and believe, is still pending for decision in the Courts;

That for such increases in their operating costs the plaintiffs would have no redress or recovery whatever and would thereby be irreparably injured and damaged;

That all of the foregoing would be brought about by unlawful means, namely, the going into effect of the Secretary of Labor's aforesaid unlawful decree or determination.

By changing the prayer of the complaint so that it shall read:

WHEREFORE, the plaintiffs pray the Court:

That the defendant be directed to certify and transmit to this Court the entire record in the proceeding above referred to in order that this Court may fully review the same.

996 That judgment be entered declaring the aforesaid decree or determination of the Secretary of Labor to be unlawful and void.

That the aforesaid decree or determination be permanently stayed from going into effect and that the defendant, and his agents and representatives and successors in office, be permanently restrained and enjoined from in any manner putting the said decree or determination into effect.

That pending a complete review and adjudication of this cause, the aforesaid decree or determination be

stayed from going into effect and that the defendant, and his agents and representatives and successors in office, be enjoined from in any manner putting the said decree or determination into effect.

That the plaintiffs be granted such other and further relief as to the Court may seem just and proper.

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997 Harold V. Kennedy
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Attorneys for the Plaintiffs

[Note:

Order denying motion to dismiss and granting stay and preliminary injunction entered February 20, 1953, appears at pp. 127-8 of this appendix, being identical in both cases.

Pursuant to the order for joinder of additional parties plaintiff, motions to add plaintiffs were filed as follows:]

1953

1059 Feb. 21 Motion of Aleo Mfg. Co., et al. [Atlantic Cotton Mills, Alice Manufacturing Company, Bishopville Finishing Company, Bladenboro Cotton Mills, Inc., Chesnee Mills, Climax Spinning Company, Clifton Manufacturing Company, Coats & Clark, Inc., Dundee Mills, Inc., The Dunson Mills, Erwin Mills, Inc., Fairforest Company, Gastonia Combed Yarn Corporation, Gerrish-Milliken Mill (Div. of Pacolet Mfg. Co.), Grace Cotton Mills, Gurney Manufacturing Company, Hartwell Mills, Hill Spinning Company, Huntsville Manufacturing Company, Irene Mills, Jewel Cotton Mills, Inc., J. & J. Spinning Mills, Kerr Bleaching and Finishing Works, Inc., Kingsley Mill Corporation, Lane Cotton Mills Company, Limestone Manufacturing Company, Lowell Bleachery (Sub. of Dundee Mills, Inc.), M. Lowenstein & Sons, Inc., Majestic Manufacturing Company, Mills Mill, Mooresville Mills, Orr Mills, Osage Manufacturing Company, Pelzer Mills, Piedmont Cotton Mills, Quaker Meadow Mills, Inc., Rhyne-Houser Manufacturing Company, Riegel Textile Corporation, Rock Hill Printing & Finishing Company, Shelby Cotton Mills, Springs Cotton Mills, Sterling Spinning Company, J. P. Stevens & Company, Inc., Stowe Thread Company, Superior Yard Mills, Inc., Trenton Cotton Mills, Union Bleachery, Warrior Duck Mills, West Textile Mills, Inc.,] for joinder as addition parties pltf.

1063 Feb. 21. Motion of Anchor Rome Mills, Inc., et al. [Arkansas Cotton Mills, Inc., Carlton Yarn Mills, Inc., Crompton-Richmond Company, Inc., Crompton-Shenandoah Company, Inc., Georgia Duck and Cor-age Mills, Lanett Bleachery and Dye Works] for joinder as additional parties pltfs

1078 Feb. 25 Motion of Weldon Mills, Inc. for joinder as additional party pltf

1080 Feb. 25 Motion of Morgan Cotton Mills, et al. [Tifton Cotton Mills, Reeves Bros., Inc., Rocky Creek Mills, Wellington Mills, Graniteville Company, Threads Inc., Waverly Mills, Inc.] for joinder as additional parties

1082 Mar. 3 Motion of Eagle & Phenix Div., et al. [Fairforest Company, Hamer Spinning Mills] for joinder as additional parties pltf

1121 Mar. 5 Motion of Balston Yarn Mills, Inc., et al. [Carolina Inc., B. F. Goodrich Company, Macanal Mills, Inc., Morowebb Cotton Mills Company, Pacific Mills] for joinder as additional parties pltfs

1122 Mar. 5 Motion of Lockwood-Dutchess, Inc., for joinder as additional party pltf

1129 Mar. 12 Motion of Carolinian Mills, Inc., Corriher Mills Co., Linn Mills Co. & Rex Mills, Inc. for joinder as additional parties pltf

1131 Mar. 14 Motion of Shuford Mills, Inc., Stowe Mills, Inc. & Textron, Inc., for joinder as additional parties pltf

1139 Mar. 18 Motion of Chiquola Manufacturing Co., et al. [The Chronicle Mills, Excelsior Mills, Hillsboro Cotton Mills, Imperial Yarn Mills, Inc., Laurens Mills, National Yarn Mills, Inc., Rushton Cotton Mills, Stowe Spinning Company] for joinder as additional parties pltf

1142 Mar. 25 Motion of United States Rubber Co., Textile Div., for joinder as additional party pltf

1144 Mar. 27 Motion of Smitherman Cotton Mills, Inc., for joinder as additional party pltf

1146 Mar. 30 Motion for New Braunfels Textile Mills & Peerless Spinning Corp. for joinder as additional parties pltf

1148 Apr. 8 Motion of Arkwright Mills and Carolina Mills, Inc. for joinder as additional parties pltf

1150 Apr. 10 Motion of Carolina Textile Co., et al. [Micolas Cotton Mills, South Carolina Mills, Opp Cotton Mills, Inc.] for joinder as additional parties pltf

1153 Apr. 15 Motion of Anderson Narrow Fabrics, et al. [Leward Cotton Mills, Inc., Pickens Mill, Werthan Bag Corporation, Juliette Milling Co., Willingham Cotton Mills] for joinder as addition parties pltf

1155 Apr. 15 Motion of Bowling Green Spinning Co., et al. [Clayton Spinning Company, Farmac Mills, Inc., Harden Manufacturing Company, Harden Spinning Company, Peck Manufacturing Company of North Carolina, Inc., Tolar, Hart and Holt Mills, Inc., Waxhaw Manufacturing Company] for joinder as additional parties

1157 Apr. 16 Motion of Barbet Mills, Inc., et al. [Dacotah Cotton Mills, Inc., The Jefferson Mills, Inc., Washington Manufacturing Company, Inc.] for joinder as additional parties pltf

1165 Apr. 22 Motion of Caldwell Cotton Mill, et al. [Dover Yarn Mill, Inc., Hayes Cotton Mill Company, Hudson Cotton Manufacturing Company, Moore Cotton Mill Company, The Strickland Cotton Mills] for joinder as additional parties pltf

1171 June 2 Motion of Sherrill Yarn Mills, Inc., for joinder as additional party pltf

1173 June 8 Motion of Cotwool Mfg. Corp. & Judson Mills Division for joinder as additional party pltfs

1175 July 27 Motion of Henry River Mills Co., Inc., for joinder as additional party pltf

1159 Filed April 20, 1953

Answer

FIRST DEFENSE

1. Answering paragraph 1 of the complaint, defendant states that he has no knowledge or information sufficient to form a belief as to the truth of the allegations therein contained and, therefore, denies said allegations.

2. Answering paragraph 2 of the complaint, defendant admits the allegations therein.

3. Answering paragraph 3 of the complaint, defendant admits the allegations therein.

4. Answering paragraph 4 of the complaint, defendant denies each and every allegation therein.

5. Answering paragraph 5 of the complaint, defendant admits that on January 15, 1953, the then Secretary of Labor, acting under Section 1(b) of the Walsh-Healey Public Contracts Act, issued a "Notice of Amendment to the Determination of the Prevailing Wage for the Textile Industry." A copy thereof is attached hereto as Exhibit A, and the Court is respectfully referred thereto for the full text, meaning, purport, and effect thereof. Except as admitted by the foregoing the allegations of paragraph 5 are denied.

1160

6. Answering paragraph 6 of the complaint, defendant admits that prior to said Determination and pursuant to notice published July 26, 1952 in the Federal Register (17FR 6871) a hearing before a duly qualified Hearing Examiner was held on September 3-5, 1952, pursuant to the Rules of Practice for Minimum Wage Determinations under the Walsh-Healey Public Contracts Act promulgated by the Secretary of Labor, and duly published in the Federal Register (17 FR 7255). Evidence and testimony was received, a record of the proceedings was duly made, and statements and briefs of interested parties received. Defendant further admits that said Determination applies and

is effective to the Cotton, Silk, and Synthetic Fiber Branch of the Textile Industry wherever found in the United States. Except to the extent admitted by the foregoing, the allegations of paragraph 6 of the complaint are denied.

7. Answering paragraph 7 of the complaint, defendant denies each and every allegation therein.

8. Answering paragraph 8 of the complaint, defendant denies that the objections and exceptions taken to the wage determination proceedings by plaintiffs and other interested parties were disregarded or did not receive due and proper consideration and alleges that the rulings thereon and the final Determination rendered were correct and lawful in all respects. Except as so denied the allegations of paragraph 8 of the complaint are admitted.

9. Answering paragraph 9 of the complaint, defendant denies each and every allegation therein.

Second Defense

The Court is without jurisdiction of this section in that the complaint fails to allege facts presenting a case of controversy within the meaning of Article III, Sections 1 and 2 of the Constitution of the United States.

1161

Third Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Fourth Defense

The Court is without jurisdiction of this action in that the complaint fails to allege rights of the plaintiffs, or any of them, arising under any Act of Congress regulating commerce.

Fifth Defense

The Court is without jurisdiction of this action in that the complaint fails to allege that an amount exceeding $3,000, exclusive of interest and costs, is in controversy.

Six Defense

The Court is without jurisdiction of this action in that the complaint fails to allege facts showing that plaintiffs, or any of them, are persons "adversely affected or aggrieved" by any acts of the defendant in the premises within the meaning of Section 10(b) of the Walsh-Healey Public Contracts Act, as amended.

Seventh Defense

The complaint fails to state a claim against defendant in that plaintiffs have failed to show any legal right or legal interest entitling them to maintain this suit.

Eighth Defense

The complaint fails to state a claim against the defendant in that there is no allegation of facts to show an actual controversy within the meaning of the Declaratory Judgment Act (28 USC 2201).

Ninth Defense

The complaint fails to state a claim against the defendant in that there is no allegation of facts to show that plaintiffs, or any of them, have suffered a legal wrong because of any action of the defendant.

1162

Tenth Defense

The complaint fails to state a claim against the defendant upon which relief may be granted in that there is no allegation of facts to show that the plaintiffs, or any of them, are threatened with or are in danger of suffering, any immediate or irreparable damages or injury cognizable in equity.

Eleventh Defense

Plaintiffs have an adequate remedy at law with respect to all the matters alleged in the complaint.

TWELFTH DEFENSE

The Amendment to the Determination of the Prevailing Wage for the Textile Industry, issued by defendant's predecessor January 15, 1953, and effective February 21, 1953, is valid and subsisting, and has been duly rendered and promulgated in accord with applicable law.

WHEREFORE, defendant prays that the preliminary injunction and order staying the operation of his Determination be vacated, that the complaint herein be dismissed, and that he recover his costs and disbursements herein.

/s/ WARREN E. BURGER
Assistant Attorney General

Of Counsel

/s/ EDWARD H. HICKEY
Attorney, Department of Justice

/s/ JETER S. RAY
Acting Solicitor

/s/ JOHN J. BABE
Assistant Solicitor

/s/ JAMES M. MILLER
Attorney
United States Department of Labor

[NOTE:

Order upon oral motion substituting Lloyd A. Mashburn, Acting Secretary of Labor, as defendant, was entered on September 16, 1953.

Order upon oral motion substituting James P. Mitchell, Secretary of Labor, as defendant, was entered on November 13, 1953.

Orders dismissing complaint as to some of the plaintiffs were entered as follows:]

1954

1239 June 17 Order dissolving preliminary injunction & dismissing complt. as to Cannon Mills Co. only.

1243 June 25 Order dismissing complt. as to pltfs. Brown Mfg. Co., Gerrish-Milliken Mill, Judson Mills, Kingsley Mill Corp., Laurens Mills & Monarch Mills ONLY; the stay & preliminary injunction heretofore entered be dissolved.

1244 June 25 Order dismissing complt. as to Cotwool Mfg. Corp., Drayton Mills, Excelsior Mills, Lockwood-Dutchess Inc., & Pacolet Mfg. Co., & dissolving stay & preliminary injunction.

1249 July 9 Order dismissing complt. as to pltfs. Barbet Mills, Inc., Carolina Mills, Inc. of Dillon, S.C.; Carolina Textile Co., Hill Spinning Co. & Morowebb Cotton Mills Co., with consent of defts.

1253 July 19 Order dissolving preliminary injunction as to pltf. Waverly Braid Mills & dismissing complt. as to said pltf.

1256 July 21 Order dissolving the stay & preliminary injunction & dismissing complt. as to pltf. Roberta Manufacturing Co. with consent of deft.

1261 Aug. 2 Order dismissing complt. as to pltf. American Thread Co.

1264 Aug. 13 Order dismissing complt. as to Bamberg Textile Mills only.

1266 Aug. 16 Order dismissing complt. as to pltf. Shelby Cotton Mills only.

1282 Aug. 23 Order dismissing complt. as to Parkdale Mills, Inc. and Stowe Mills, Inc., only and dissolving stay and preliminary injunction entered as to these plaintiffs.

1283 Sept. 7 Order dismissing complt. as to New Braunfels Textile Mills & dissolving preliminary injunction as to said pltf.

1284 Sept. 7 Order dismissing complt. as to Werthan Bag Corp. & dissolving preliminary injunction as to said pltf.

1303 Sept. 23 Order dismissing complt. as to pltff. The Sherril Yarn Mills.

1304 Sept. 28 Order dissolving the stay and preliminary injunction, and dismissing complt as to pltfs 14, 26, 42, 70, 75, 110, 118, 120, 132, 134 & 167 only. [Cedartown Yarn Mills, Inc., Grantville Mills, Neely Mills, Inc., York Mills, Bladenboro Cotton Mills, Inc., Rock Hill Printing & Finishing Company, Union Bleachery, West Textile Mill, Inc., Tifton Cotton Mills, Rocky Creek Mills, & Smitherman Cotton Mills, Inc.]

1305 Nov. 18 Order dismissing complt as to pltfs 124, 126, 34, 99, 133, 176, 141, 146, 38 and 8. [Crompton Company, Crompton-Richmond Company, Inc., Johnston Mills Co., M. Lowenstein & Sons, Inc., Reeves Bros., Inc., Anderson Narrow Fabrics, Hamer Spinning Mills, Macanal Mills, Inc., Mexia Textile Mills, and Bonnie Cotton Mills, Inc.]

1280

Filed Aug 20, 1954

Defendant's Answer to Plaintiffs' Interrogatory No. 7

City of Washington }
District of Columbia } ss

I, Arthur Larson, being duly sworn, depose and say that the Department of Labor keeps records consisting of reports required to be made by all contracting agencies of the Government to the Administrator of the Public Contracts Division of all contracts (exclusive of contracts which, for security reasons, the contracting agencies have classified as confidential, secret, or top secret) awarded subject to the Walsh-Healey Public Contracts Act. I have caused an examination to be made of these records, and I am informed that the total value of contracts in the Textile Industry they show to have been awarded by the United States Government, including all branches or agencies thereof, during the calendar years 1951 and 1952 is $701,972,000 and $494,962,000, respectively. I have no information concerning the excluded contracts, if any, and none is available to me.

(Signed) ARTHUR LARSON
Acting Secretary of Labor

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 20th day of August, 1954.

(signed) Arthur H. Hardy

My commission expires May 30, 1956.

1308

Filed Nov. 18, 1954

Stipulation

Subject to appropriate objection based on the grounds of irrelevancy or immateriality, the plaintiffs and defendants stipulate as follows:

1. Newspaper articles in the Daily News Record to the extent quoted in the affidavit of W. Glen Harlan dated October 27, 1952 (said affidavit having been filed in the record of administrative proceedings herein) give a true and correct account of the statements of Secretary Tobin and the activities of his assistants in the Department of Labor.

2. Said affidavit of W. Glen Harlan contains a correct quotation from the speech of Secretary of Labor Tobin to the Steel Workers Convention on May 14, 1952.

3. Secretary of Labor Tobin in May, 1952, testified before the Senate Committee on Banking and Currency, 82nd Cong., 2d Sess., on S. 2594 and S. 2645 as set forth on pp. 2475 et seq. of the transcript of Hearings, part 5, hereto attached.

340

Exhibit A

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

IN THE MATTER OF THE DETERMINATION OF THE PREVAILING MINIMUM WAGES FOR THE TEXTILE INDUSTRY

Excerpts from Affidavit of Personal Bias or Disqualification of Officers Participating in Decisions

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341 "McCOMB SEES MOVE IN JANUARY TO HIKE TEXTILE BASE PAY

"By Staff Correspondent.

"Washington, Nov. 28, [1951]—Federal Wage-Hour Administrator William R. McComb told Fairchild News Service today that the Labor Department might be
342 ready to take the first steps early in January toward setting a higher Walsh-Healey Act minimum wage rate for the cotton and rayon textile industry, but a short time later other wage-hour officials said it would not be possible to go ahead that soon.

* * * * * * *

"Because the TWUA made known, about a week ago in New York that it would also seek a higher Walsh-Healey Act minimum wage rate for the woolen and worsted segment of the textile industry, creation of a second informal panel to review this petition also is likely early next year, according to Wage-Hour Division officials.

"Meanwhile, Mr. McComb said that his division has received no request from New England garment manufacturers for a determination of Walsh-Healey minimum rates for cotton or woolen garment manufacturing.

"Mr. McComb also clarified a Daily News Record story, printed Nov. 15, in which it was stated that he was in New York City Nov. 8 and 9 to discuss the timing of the cotton-rayon Walsh-Healey Act wage redetermination with textile union officials. He explained that he did not participate in these talks, although other wage-hour division staff members did. He said that he was in New York City at the time of these meetings."

343 "U. S. EXPLAINS DELAY IN TEXTILE WAGE STUDY

"By John T. Norman

"Washington, Jan. 9, [1952]—Why Labor Secretary Maurice Tobin does not want to start machinery rolling now for a Walsh-Healey Act wage redetermination for the cotton-rayon segment of the textile industry was brought to light today.

"At the same time, it was learned that Sen. Theodore F. Green (D., R. I.), on Jan. 3, once again demanded that these proceedings be started 'immediately' and that other steps be taken by the Government to call attention to 'low wage competition' within the industry in the United States.

"Mr. Tobin said in a Nov. 29 letter, a copy of which was obtained for the first time today, that 'it appears that such a large proportion of the workers in the (cotton-rayon) industry are in plants which still do not maintain a minimum wage of $1.03½ that a determination at $1.03½ cannot be substantiated at this time.

"'There are indications, however, that by early spring the wage picture may improve to a point where there will be a much better expectation that this rate could be found to be prevailing,' the Labor Secretary added.

* * * * * *

"While Secretary Tobin said, 'It would not be desirable to begin proceedings for the cotton and rayon

industry in the view of the almost certain result that the rate would have to be set at less than $1.03½,' he also commented:

"'I believe, too, that there will be some advantage to be gained in beginning with the woolen and worsted industry where the contract rate is now $1.26½.'"

344 "PAY FLOOR STUDY SET ON GOVT. WORK IN COTTON, RAYON

"By Paul Theis

"Washington, Jan. 17, [1952]—Labor Secretary Maurice J. Tobin said today that proceedings would get underway here shortly to boost minimum wage rates under the Walsh-Healey Public Contracts Act for the cotton and rayon industry.

"Meanwhile, an official of the department's Wage and Hour Division said the first informal panel discussions with representatives of the cotton and rayon industry and the textile unions would be held here, 'sometime next month.'

345 "Secretary Tobin said that 'available data' indicate that the minimum wages now prevailing in cotton and rayon plants 'are in excess of the 87-cent rate which was determined over three years ago.' The present determination went into effect Nov. 16, 1948."

Daily News Record for September 3, 1952:

"Labor Department officials, explaining that there was no doubt about their authority to order regional minimum rates, said such differentials were now in effect in three industries—steel and iron, paint and varnish, and chemicals."

EXCERPTS FROM SPEECH OF SECRETARY OF LABOR TOBIN ON OR ABOUT MAY 14, 1952 BEFORE THE SIXTH CONSTITUTIONAL CONVENTION OF THE UNITED STEEL WORKERS OF AMERICA:

351 "The steel union and the steel companies are in the midst of a great dispute, they pointed out. You have to be impartial. You can't take sides.

"Well, I don't agree with them. There was a time for impartiality in the steel dispute. That was the time when the steel companies and the steel unions were presenting their cases to the Wage Stabilization Board.

* * * * *

"That was the time for impartiality. That was the time for not taking sides. But when the Board concluded its deliberations, when the Board proclaimed to the American people that the steel workers were entitled to improvements in wages and working conditions that would bring them in line with other workers in American industry, then the time for impartiality was over.

* * * * *

"The union has accepted these recommendations and the industry has not. Therefore, I am not impartial about this dispute. I don't feel any obligation to be impartial. I want

you to know that from the moment your great president, Philip Murray, signified that the union would accept the recommendations of the Board, I have stood heart and soul and spirit behind the United Steelworkers of America.

"I happen to believe that the purchasing power that sustains this economy and makes it strong must come largely out of the pay envelope of the American worker. I want workers to have the money to buy the things that American industry produces. That is what makes us prosperous in this country.

* * * * *

352 "Despite all the proof that is around us, and that proof is not found solely in the automobiles, television sets and other electrical appliances owned by workers, but in the financial reports of our country's business houses—there are still far too many business executives who have as their philosophy that it is dangerous for the working man to have a high wage.

* * * * *

"It is reasonable to ask where is the money coming from to pay for the changes in wages and working conditions that have been recommended by the Board. The answer is simple, and that is they can be paid out of the fabulous profits that the steel industry has been earning and will continue to earn."

1325 Filed Dec. 21, 1954

Request for Admission Under Rule 36

Plaintiffs, Alabama Mills, Inc., et al., request defendant, James P. Mitchell, Secretary of Labor, within ten days after service of this request to make the following admission for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial or upon motions for summary judgment:

That the Department of Labor release No. USDL-889, hereto attached, is a true and correct copy of the address by the Secretary of Labor James P. Mitchell before the Sixteenth Convention of the Congress of Industrial Organizations Los Angeles, California, December 7, 1954, and particularly of the marked passages therein referring to administration of the Walsh- Healey Public Contracts Act.

FLANNERY, CRAIGHILL & AIELLO
By LLEWELLYN C. THOMAS
725 15th Street, N. W.,
Washington 5, D. C.
Attorneys for Plaintiffs.

1327 Filed Dec. 22, 1954

Excerpts from Exhibit

U. S. DEPARTMENT OF LABOR

JAMES P. MITCHELL, *Secretary*

ADDRESS BY SECRETARY OF LABOR JAMES P. MITCHELL BEFORE THE SIXTEENTH CONVENTION OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, LOS ANGELES, CALIFORNIA, DECEMBER 7, 1954.

When I was in Miami speaking to the IUE, Jim Carey asked me to hold hearings in connection with establishing a new minimum wage in the electric lamp industry. Upon my return to Washington I immediately started the wheels turning on this. Then two weeks later, Fitzgerald of the UE wrote me a letter, which, incidentally, I saw first in the DAILY WORKER, asking also that hearings be started in this industry. I can assure you that Fitzgerald did not get a cordial or polite reply.

And what are the other fronts on which we should move ahead this year?

On the administrative side, we must enforce vigorously and fairly the laws entrusted to our administration. I can assure you that we in the Department of Labor are vigorously enforcing the legislation for which we are responsible. For example, in 1954, we made 781 more investigations under the Fair Labor Standards Act than were made in 1953.

The Department of Labor is dedicated to the principle of vigorous law enforcement. The Public Contracts Act applying to Government business is among the laws we are vigorously enforcing. There have been under that Act, this year and last, 101 final decisions affecting the enforcement of standards of wages, hours and working conditions. This is about twice as many as in the two years before that. In addition, for the first time, federally enforced safety standards have been applied to the small mines where they are so badly needed. I have issued orders increasing the minimum wage for wool and worsted workers to $1.20 an hour and for those in metal furniture to $1.10 an hour. I have directed my staff to complete as soon as possible other orders raising wages under the Public Contracts Act.

These determinations have been based on the principle that a uniform industry-wide minimum wage should be enforced. Two hundred and ten of the employers in the cotton textile industry, and forty-four employers in the worsted

and woolen industry have gone to court on this. They contend I must separately find the lowest prevailing wage for each community. If they succeed, it will do more damage to your interest in the Public Contracts minimum wage than any other single thing. Both the Departments of Labor and Justice are vigorously defending these suits until a final decision is rendered. I shall exert every possible effort to insure that the Public Contracts Act is not weakened.

1337 Filed Dec. 29, 1954

Response to Request for Admission

James P. Mitchell, Secretary of Labor, defendant makes the following statement in response to the request for admission under Rule 36 served upon his attorney by plaintiff's attorney December 21, 1954:

Subject to all pertinent objections to admissibility which may be interposed at the trial or upon motion for summary judgment he admits that the Department of Labor release No. USDL-889, attached to said request, is a true and correct copy of the address by Secretary of Labor James P. Mitchell before the Sixteenth Convention of the Congress of Industrial Organizations, Los Angeles, California, December 7, 1954.

/s/ Edward H. Hickey

Attorney, Department of Justice,
Attorney for Defendant.

Sworn to before me this 29th day of December, 1954.
/s/ MADELINE MACDONALD

My commission expires Jan. 14, 1956.

1338 Filed Jan. 18, 1955

Order

Upon consideration of the motion of the National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company, for leave to intervene in the above-captioned cause, it is by the Court this 18th day of January, 1955,

ORDERED that the motion of National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company to intervene is hereby granted, that said movants are hereby permitted to intervene as parties to this action, and that their answer, tendered with their said motion, be considered and held to be their answer to the complaint herein.

/s/ James R. Kirkland
United States District Judge.

Seen: /s/ Flannery, Craighill & Aiello
By Llewellyn C. Thomas
Counsel for Plaintiffs.

/s/ Edward H. Hickey
Counsel for Defendant.

1368 Filed Mar. 7, 1955

Order

Upon consideration of the motion of the Textile Workers Union of America, for leave to intervene in the above-captioned cause, it is by the Court this 7th day of March, 1955,

Ordered that the motion of Textile Workers Union of America to intervene is hereby granted, that said movant

is hereby permitted to intervene as party to this action and to file as its answer the proposed answer tendered with its motion.

JAMES R. KIRKLAND
United States District Judge.

Approved as to form:

FLANNERY, CRAIGHILL & AIELLO
Attorneys for Plaintiffs.

By LLEWELLYN C. THOMAS

WARREN E. BURGER
Attorney for Defendant.

By EDWARD H. HICKEY

1320 Filed Dec. 3, 1954

Answer of National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company, Intervenors.

National Association of Cotton Manufacturers, a corporation organized and existing under the laws of the Commonwealth of Massachusetts (hereinafter referred to as the "Association"), Berkshire Fine Spinning Asso-
1321 ciates, Inc., Fitchburg Yarn Company, and Hathaway Manufacturing Company, having been permitted to intervene as parties defendant, answer the Complaint as follows (each numbered paragraph herein referring to the similarly numbered paragraph in the Complaint):

1. They admit the allegations of paragraph 1.
2. They admit the allegations of paragraph 2.
3. They admit the allegations of paragraph 3.
4. They neither admit nor deny the allegations of paragraph 4, said allegations being conclusions of law not requiring an answer.
5. With respect to the allegations of paragraph 5, they

admit that on or about January 15, 1953, the then Secretary of Labor, Maurice J. Tobin, acting under section 1(b) of the Walsh-Healey or Public Contracts Act, 41 U. S. C. 35(b), issued a "Notice of Amendment to the determination of the prevailing minimum wage for the Textile Industry," which Notice contained an amendment consisting, in part, of the sentence quoted in this paragraph.

6. They deny the allegation of paragraph 6 that the determination of the Secretary of Labor, referred to in paragraph 5, was, or is, unlawful, and, with respect to the subsections of said paragraph,

(a). They deny the allegations of subsection (a). and further answering say that under the Walsh-Healey Act the Secretary is empowered to determine the prevailing minimum wage for "similar work" or "in a particular industry" without regard to any factor of locality; and, further, that in the textile industry the "locality" in which textiles are to be manufactured and furnished under government contracts necessarily comprises the entire area within which textile mills compete.

(b) They deny the allegations of subsection (b).

(c) They deny the allegations of subsection (c).

1321a (d) They admit that the Secretary's determination fails to state that it applies only to such products of the textile industry as may not usually be bought in the open market, but deny that the determination should so state, and further answering say that no issue as to any "open market" exemption was properly present in the proceedings before the Secretary and any question as to such exemption was a matter to be determined in separate proceedings held for that purpose.

(e) They admit the allegations of subsection (e), except that they deny that such notice as was required by law to interested parties was not given, and further answering

say that the notice given was adequate to inform all interested persons as to the issues of the proceeding.

(f) They deny the allegations of subsection (f), and further answering say that rules of procedure under which proceedings were to be conducted were published on or about August 30, 1952, and that such publication was adequate and proper.

(g) They admit that the Secretary admitted into the record of the proceeding after the hearing statistical data consisting of Supplementary Government Exhibits A-1 through A-8 and Supplementary Government Exhibit B, which were the subject of an Order of the Secretary issued in the proceeding January 12, 1953, but further answering say that plaintiffs had no right of cross examination as to said data.

(h) They deny the allegations of subsection (h).

(i) They deny the allegations of subsection (i), except that they admit that an attorney for a group of cotton manufacturing companies did file "An Affidavit of Personal Bias of Officers Participating in Decisions" in the proceeding before the Secretary, and further answering
1322 say that the Secretary considered the question of bias raised thereby, and that the Secretary ruled that the assertion in said affidavit of bias was completely without merit.

7. They deny the allegations of paragraph 7.

8. They deny the allegations of paragraph 8, except that they admit that the Secretary issued the determination referred to in paragraph 5, effective February 21, 1953.

9. They deny the allegations of paragraph 9, except that they admit that if the Secretary's determination becomes effective, government contracting agencies will require the inclusion of the $1 minimum rate in contracts for textiles

and will deny contracts to those refusing to include the $1 rate.

/s/ WARREN F. FARR

/s/ ROPES, GRAY, BEST, COOLIDGE & RUGG
50 Federal Street,
Boston 10, Mass.

WILKINSON, BOYDEN, CRAGUN & BARKER
By /s/ JOHN W. CRAGUN
744 Jackson Place, N. W.,
Washington 6, D. C.,
Telephone: National 8-1114

Attorneys for National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company, Intervenors.

1366 Filed March 7, 1953

Answer of Textile Workers Union of America, CIO, Intervener

Intervener Textile Workers Union of America, CIO (hereinafter referred to as TWUA) an unincorporated association, with its headquarters in New York, New York, engaged in the representation of employees in the textile industry with respect to all matters relating to wages, hours, and working conditions, as provided for by the National Labor Relations Act, as amended, and the certified collective bargaining representative for some or all of the production and maintenance employees of plaintiffs Clifton Manufacturing Company, Jewel Cotton Mills, Inc., Pickett Cotton Mills, Inc., Textron, Inc., Erwin Mills, Inc., Coats

and Clark, Inc., Pacific Mills, Pepperell Manufacturing Company, U. S. Rubber Company, Textile Division, Gastonia Combed Yarn Corp., Gurney Manufacturing Company, answers the complaint herein as follows:

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are admitted.

4. The allegations of paragraph 4 are admitted.

5. With respect to the allegations of paragraph 5, it is admitted that on January 15, 1953, Maurice J. Tobin, Secretary of Labor, issued a notice of amendment to the determination of the prevailing minimum wage for the Textile Industry.

6. With respect to the allegations of paragraph 6 of the complaint it is denied that the determination of the Secretary of Labor referred to to in paragraph 5 was or is unlawful and it is averred that the determination
1367 is in all respects valid and subsisting and in all respects complies with the requirements of law.

7. The allegations of paragraph 7 are denied.

8. With respect to the allegations of paragraph 8, it is admitted that objections and exceptions were taken by the plaintiffs and other interested parties to the wage determination proceedings and that the Secretary issued the determination referred to in paragraph 5, effective February 2f, 1953. All other allegations of paragraph 8 are denied.

9. The allegations of paragraph 9 are denied, except that it is admitted that if the Secretary's determination becomes effective, government contracting agencies will require the inclusion of a $1.00 minimum rate in contracts for tex-

tiles and that, as a result thereof, government contractors will pay a minimum rate of $1.00 per hour.

ARTHUR J. GOLDBERG
DAVID E. FELLER
1001 Connecticut Avenue NW.
Washington 6, D. C.
BENJAMIN PYLE
99 University Place
New York, N. Y.
By DAVID E. FELLER
Attorneys for Textile Workers Union of America, CIO

[NOTE: Further proceedings in Alabama Mills et al. v. Mitchell appear below, being identical in both causes.]

PART III—DOCUMENTS PERTINENT TO BOTH COVINGTON MILLS ET AL. V. MITCHELL, AND ALABAMA MILLS, INC. ET AL. V. MITCHELL

Excerpts from transcript of hearing before Judge Henry A. Schweinhaut on February 16 and 17, 1953 containing his opinion on granting preliminary injunction.

* * * * * * * * * * *

127 The Court: Because the Congress knew—and they obviously knew; they passed this statute—what locality" meant by dictionary definition and by any useage of the word; and they also knew presumably what it meant as a practical matter for the Secretary of Labor in carrying out the provisions of the statute.

* * * * * * * * * * *

150 The Court: Gentlemen, I am persuaded that I must stay the effective date of this order. Having read this file completely—perhaps not as studiously as more time would permit, but certainly completely yesterday and last night—and having heard very able arguments and very helpful arguments today, there is very grave doubt in my mind about whether or not the Secretary arrived at his order pursuant to law.

It is my impression, shall I put it, at this time, that he did not; because it seems to me "locality" clearly
151 does not mean the United States of America. The efforts to come up with something that would be workable and meaningful all were directed in the Congress to something less than the entire United States. Therefore, as I say, I have very grave doubts and lean to the opinion that it was not legally arrived at, in the sense that it was not arrived at agreeably to the requirement of the statute.

Then we must ask whether or not, that being so, these plaintiffs have any right to complain about it. I think they clearly do; and I think they do for two reasons: One is, I think they are aggrieved; at least, can be. They have a right, since they are in this industry to seek, even if they had not done so before, Government contracts; and it seems to me they have a right to seek them on the basis of regulations legally arrived at; and not to have the burden put upon them of contriving and fashioning a bid onerous to them, as they think, which they believe is based upon a concept that is illegal in its nature.

Also, I think that if they are right about it, and that this should turn out to be held by the Court to have been illegally arrived at, then they can indeed suffer irreparable injury, for what I think are the rather obvious reasons expressed here today.

Moreover, I think they have a standing to sue for
152 the simple reason that the statute said they may have it. There never was a statute more clearly designed to overturn a decision of a court than this one. I speak, of course, of the Fulbright Amendment. There is no doubt about it, that the Lukens case, in 310 U.S., would have kept these plaintiffs out of court. There is equally no doubt in my mind, in this preliminary stage of this case, that Senator Fulbright and the Congress, which went along with him, intended to cure that and to open the door to plaintiffs such as these to the courts to obtain the very kind of review they are seeking here.

Now, I do not pass upon the merits, and the opinions I express in that regard, insofar as they may concern the merits, are very definitely curbstone. This case will not come before me, since I am in the Motions Court, and I do now advance the case for final hearing; since it is a matter that should not be left hanging in a state of hiatus.

I believe my duty at this point is absolutely clear; and that is to stay the effective date of this order.

Now, I will hear counsel on bond. I may preface whatever you want to say about that by saying I cannot see, to save my life, how any rationalization of the bond, other than a nominal bond, can be made. No bond is going to cure the evil that I am doing, if I am doing an evil.

153 It is just wholly impractical to fix anything other than a minimum nominal bond; and I don't have any notion what that might be. If either of you care to say any more about that, I will hear you at this time.

Mr. Babe: I would suggest, your Honor, though I realize what you have said about your feelings about the Lukens decision, there is some rather strong criticism of the circuit in the Lukens decision for the failure of the circuit to suspend the operation of the determination without the bond. I feel compelled to follow the suggestion that has been made by the Court there, and I share its views and reasons for it, that a bond should be imposed here; and I that that while there might be difficulty with its terms, I think it would be clear enough, when, as, and if, any of these particular plaintiffs—and I don't know whether your order goes just to the first ten or to all of them——

The Court: It seems to me, Mr. Babe, that this order has got to go to all of them. It seems to me to be a very artificial difference, and a very indistinct line of demarcation between a company which may have had Government contracts, doesn't have any now, and a company which never had any at all. The one who has had the Government contracts may, for instance, say to himself, if I never

hear of a Government contract again, it will be too
154 soon. The other one, who has never had a Government contract, may be looking eagerly to the day when he can have one. So I don't see any distinction between them. Therefore, it seems to me, it should run to all of them.

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438 Filed February 19, 1953

Civil Action No. 259-53

COVINGTON MILLS, ET AL., *Plaintiffs*,

v.

MARTIN P. DURKIN, Secretary of Labor, *Defendant*.

This cause having come on for hearing on the application of plaintiffs for a stay and a preliminary injunction and the Court having considered all the pleadings, affidavits, exhibits, and memoranda of law submitted herein; and having heard the arguments of counsel; now makes the following Findings of Fact and enters the following Conclusions of Law with respect to said application:

Findings of Fact

1. The plaintiffs are engaged in the business of manufacturing and selling textile products.

2. On or about January 15, 1953, the then Secretary of Labor issued a "Notice of Amendment to the Determination of the Prevailing Minimum Wage for the Textile Industry," which according to its terms would become effective February 21, 1953.

3. In and by said determination, the Secretary of Labor undertook to declare and direct that "the minimum wage for persons employed in the manufacturing or furnishing of the products of the cotton, silk and synthetic and textile branch of the textile industry under contracts subject

to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis."

439-440 4. The said minimum wage determination thus purports and undertakes to set a single nation-wide prevailing minimum wage for the branch of the textile industry of the United States as defined in the said determination.

5. The plaintiffs are manufacturers of materials, supplies, articles or equipment purchased or to be purchased by the Government and are in an industry to which the aforesaid minimum wage determination is applicable.

6. The plaintiffs are adversely affected and aggrieved by the aforesaid minimum wage determination and will be irreparably injured and damaged unless its effectiveness is stayed as to them pending the Court's review and adjudication of this cause, in that plaintiffs are in the industry affected and have a right to seek, even if they had not done so before, Government contracts on the basis of regulations legally arrived at.

Conclusions of Law

1. The Court has very grave doubts that the aforesaid amended determination was arrived at agreeably to the requirement of the statute.

2. The plaintiffs are adversely affected and aggrieved thereby.

3. The plaintiffs under Section 10b of the Walsh-Healey Public Contracts Act as amended (41 U.S.C. Sec. 43(a)), have legal standing to challenge the validity of the said minimum wage determination.

4. Plaintiffs will be irreparably injured and damaged unless the effectiveness of the said minimum wage determination is stayed and enjoined as to them pending further order of this Court.

/s/ H. A. SCHWEINHAUT
Judge

Dated: Feb. 19, 1953

441 Filed February 19, 1953

Order Denying Motion to Dismiss and Granting Stay and Preliminary Injunction

This cause having come on for hearing on the motion of plaintiffs for a stay and preliminary injunction, and upon motion of the defendant to dismiss the complaint, and the Court having considered all the pleadings, affidavits, exhibits and memoranda of law submitted herein; and having heard the arguments of counsel; and the Court having made Findings of Facts and Conclusions of Law with respect to said motions:

Now, therefore, it is by the Court this 19th day of February, 1953 ordered:

1. That the motion to dismiss, filed by the defendant, be and it is hereby denied.

2. That the amended minimum wage determination issued by the Secretary of Labor on January 15, 1953, and which by its terms would become effective February 21, 1953, be and it hereby is stayed from going into effect as to the plaintiffs herein pending further order of the Court; and that the defendant be and he hereby is enjoined from in any manner putting the said minimum wage determination into effect as to plaintiffs herein pending further order of the Court.

442 3. It is further ordered that if, during the effectiveness of this stay and preliminary injunction, any plaintiff herein enters into any contract for Government work which is subject to the Walsh-Healey Public Contracts Act as amended (41 U.S.C. secs. 35-45) and which, except for this stay and preliminary injunction, would be subject to the aforesaid minimum wage determination, then such plaintiff shall before undertaking performance of said contract, file with the Clerk of this Court a bond, to be approved by the Clerk, in the amount of $2,000. In said bond such plaintiff shall agree that, in the event it is finally decided that this stay and preliminary injunction should

not have been granted, it will pay to its employees who perform work under such contract any difference, up to the aforesaid amount of the bond, between the wages they actually receive for work performed under said contract, while this stay and preliminary injunction is in effect, and the wages they would have received had such plaintiff been in compliance with the aforesaid minimum wage determination during such time and during the performance of said work under said contract.

4. The undertaking contained in said bond shall be without prejudice to such other liability, if any, as may exist on the part of such plaintiff for unpaid wages in the event it is finally decided that this stay and preliminary injunction should not have been granted.

H. A. SCHWEINHAUT
Judge

[NOTE: The foregoing findings, conclusions and order were entered in the Covington Mills case on February 19, 1953, and identical findings, conclusions and order were entered in the Alabama Mills case on February 20, 1953, motions in both cases having been heard together on February 16 and 17, 1953.]

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556 Filed March 22, 1954

Defendant's Interrogatories

To each plaintiff in the above entitled action: Pursuant to Rule 33 of the Federal Rules of Civil Procedure each of you is hereby requested to answer the following interrogatories. Each interrogratory should be answered separately and fully in writing under oath. The answers should be signed by the person making them and each of you should serve a copy of your answers on defendant within 15 days after the service of these interrogatories upon you, unless the Court on motion and notice and for good cause shown, enlarges or shortens the time.

1. State the name and location of each plant operated by you in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry as defined in the Determination of the Secretary of Labor of January 15, 1953 (18 F.R. 471).

2. For each such plant when in actual operation state the maximum and minimum number of persons there employed, and the workweek or workweeks for each such employment, in 1952 and 1953.

3. State the sum of the total wages paid to all employees at each such plant during calendar years 1952 and 1953.

4. List by number and give the contract date and amount (compensation) or estimated contract amount of each Government contract in any amount exceeding $10,000 containing the representations and stipulations required by the Walsh-Healey Public Contracts Act in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry as defined in said Determination on which work has been performed during calendar years 1952 or 1953
557 in whole or in part in any plant listed in answer to Interrogatory No. 1, listing such information separately for each performing plant. Unless the operator of the plant in which the work was performed was also a party to the Government contract or shipped the product directly to the Government, do not list in answer to this interrogatory any contract on which the only work performed in the plant was dyeing or finishing, or both.

5. In answering both subdivisions A and B of this interrogatory (which relate to the impact of the $1.00 per hour prevailing minimum wage determination here in issue), exclude from the responses all employees to whom the $1.00 rate would be inapplicable because they are learners for whom subminimum wages are authorized by Title 41, Code of Federal Regulations, Section 202.43(a)(1), persons eligible for, or having obtained handicapped workers' certificates under Title 29, Code of Federal Regulations, Parts 524 and 525, and employees to whom the minimum wage provisions of the Walsh-Healey Public Contracts Act

are inapplicable under the principles discussed in Part III of Rulings and Interpretations No. 3, a copy of which is attached hereto.

X. Have the total earnings (excluding only premium pay for overtime hours), of any employee at any plant listed in answer to Interrogatory No. 1, in which he or she worked in the performance of a contract listed in answer to Interrogatory No. 4, averaged less than $1.00 per hour for any workweek in calendar years 1952 or 1953?

(1) If the answer to Interrogatory No. 5A is in the affirmative, identify each such plant, and for each separately state the name or description of each job classification in which each such employee has been primarily so employed, the total number of employees so compensated in each such classification and the total man-workweeks worked in each such job classification during calendar years 1952 and 1953 by employees so compensated,

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(2) If the answer to Interrogatory No. 5A is in the affirmative, also give the same information requested in Interrogatory No. 5A(1), separately for each plant identified in response thereto, for the respective workweeks in calendar years 1952 or 1953, in which the maximum and minimum number of such employees have been so employed,

(3) Ignoring any wage payments in excess of $1.00 per hour and the work for which it was paid, what is the total monetary difference between the wages actually paid the employees counted in response to Interrogatory No. 5A(1) for the work and for the period therein stated, and $1.00 per hour for such work?

B. If the answer to Interrogatory No. 5A is in the negative, and without restriction to work on Government contracts, give the information requested in subdivisions (1), (2), and (3) thereof, for all work in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry as defined in Title 41, Code of Federal Regulations, Section 220.43(c)(1) performed in calendar years 1952 and 1953.

6. What are the minimum and maximum hourly rates of pay actually paid for work in each of the job classifications and by each plant listed in the answers to Interrogatory No. 5, in the most recently monthly operating period in calendar year 1953.

559

/s/ Warren E. Burger
Assistant Attorney General
/s/ Leo A. Rover
United States Attorny
/s/ Edward H. Hickey
Attorney,
Department of Justice

Of Counsel:
/s/ Stuart Rothman
Solicitor
/s/ John J. Babe
Assistant Solicitor
/s/ William A. Lowe
Attorney
Department of Labor

[NOTE: Defendant's substitute interrogatories, reprinted below, were used instead of questions 5 and 6 immediately above to which answers were not required. Objections to 5 and 6 were sustained by the Court, and objections to the substitute interrogatories were overruled.]

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599 Filed May 21, 1954

Defendant's Substitute Interrogatories for 5 and 6

To each plaintiff in the above entitled action: Pursuant to Rule 33 of the Federal Rules of Civil Procedure each of you is hereby requested to answer the following interrogatories separately as to each plant operated by you in the Cotton, Silk and Synthetic Textile Branch of the Textile Industry. Each interrogatory should be answered separately and fully in writing under oath. The answers should be signed by the person making them and each of you should serve a copy of your answers on defendant within 15 days after the service of these interrogatories upon you, unless the Court on motion and notice and for good cause shown, enlarges or shortens the time.

A. Set forth, by job classification, the number of your employees paid less than $1.00 per hour, exclusive of overtime pay, for any workweek in calendar years 1952 and 1953 while working under a Walsh-Healey Government contract in said Branch, stating how many workweeks each such employee was thus compensated and employed and the total amount by which his compensation in those workweeks was less than $1.00 per hour.*

B. Give the information called for in Question A without restriction to work on Government contracts.* If Interrogatories 2 and 3 are answered for each calendar year separately, you may answer this question as to 1953 only.

600 C. During the most recent monthly operating period in calendar year 1953, what were the minimum and maximum hourly rates actually paid by each plant for

*Exclude learners and handicapped employees authorized to be paid less than $1.00 per hour by the determination, and office, maintenance, custodial, and other employees not directly engaged in production.

work in each of the job classifications listed in answers to Questions A and B?.

/s/ Warren E. Burger
Assistant Attorney General

/s/ Edward H. Hickey

/s/ Arthur H. Fribourg
Attorneys,
Department of Justice

Of Counsel:

STUART ROTHMAN
Solicitor

JOHN J. BABE
Assistant Solicitor

BESSIE MARGOLIN
WILLIAM A. LOWE
Attorneys, Department of Labor

NOTE:

Record of Proceedings Under the Public Contracts Act in the United States Department of Labor in the Matter of the Amendment to the Minimum Wage Determination for the Textile Industry, Certified by the Secretary of Labor, was Filed on July 1, 1954.

Government Exhibit No. 3

UNITED STATES DEPARTMENT OF LABOR

WASHINGTON, D. C.

Order Designating Presiding Officer for Public Hearing on the Prevailing Minimum Wages in the Textile Industry

Pursuant to the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35-45), I hereby designate

Clifford P. Grant

as Hearing Examiner to preside at the public hearing scheduled for September 3, 1952, in the matter of the prevailing minimum wages in the Textile Industry.

Upon conclusion of the proceedings and closing of the record, the Examiner shall certify the record to me.

MAURICE J. TOBIN
Secretary of Labor

Signed at Washington, D. C.
this 2nd day of September, 1952.

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17 Whereupon:

A. Henry Thurston,

appearing in behalf of the Government, made the following statement:

STATEMENT OF MR. A. HENRY THURSTON

By Mr. Kilcullen:

Q. Mr. Thurston, will you please state for the record your name and your position? A. A. Henry Thurston; Director, Textile Division, National Production Authority.

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Q. Mr. Thurston, will you please state for the record any experience you may have had with regard to the manufacture and marketing of textiles? A. I entered Lowell Textile Institute in 1921, and most of the intervening years have been spent either with private industry or with Government in textile matters. That would include clerical work with a cotton yarn house, salesman for a cotton piece goods commission agency, assistant editor of a leading textile magazine, sales manager for a concern making industrial fabrics, and with Government as Deputy Administrator of the Textile Division of the National Recovery Administration, and recently have headed the Textile activities

of the Department of Commerce, and my present position is Director of the Textile Division of N.P.A.

Q. Will you state, Mr. Thurston, the areas of the United States in which the textile products included in the definition of this industry, which is stated in the notice here, the areas of the United States in which these products are produced? A. In general, along the Eastern Seaboard with concentrations in New England, in and about the Philadelphia area, in the Southeast; except for Texas, there are not many textile manufacturing plants west of the Mississippi.

Q. Are you familiar, Mr. Thurston, with this publication?

(Document handed to the witness.)

A. Yes.

Q. It is entitled "Davison's Textile Blue Book." A. Yes, I am. It's a directory of textile manufacturing plants.

Q. Is this an authoritative trade directory of textile establishments? A. I would say that it would be generally considered a complete listing of textile enterprises.

Q. Are textiles of the same category produced in a number of different States? A. Yes.

Q. Is it common in the industry for textiles produced in one area to be shipped to another area for further processing? For example, may textiles woven in one area be sent to another area for finishing? A. Yes. I'm not quite clear what you mean by area. Do you mean State or a larger geographic area?

Q. Well, either one. Let's say a grouping of States; say, New England as opposed to the Middle Atlantic States or the Southeastern States. A. Goods are frequently shipped in the greige state from the producing plant to a finishing plant that will not be right next to the mill or even in the same State. It may be at a considerable distance from the mill.

Q. Is that also true of yarn? May yarn that is spun in

one area be sent to another area for weaving into fabrics? A. Yes. I would not say that it was common. Yarn that is produced by spinners for whom yarn is the end product, have as their largest markets trades other than the weaving trades; that is, by weaving, I mean broad fabric weaving. Most sales yarn goes to the wire covering trade, the knitting industry, and to the weavers of narrow fabrics. In time of extreme demand for goods, such as we had soon after Korea, where integrated mills either were out of balance between their weaving and yarn spinning facilities, those mills did go to the open market and purchase yarn to supplement their own supplies. That yarn might come from a wide variety of spinners located at varying distances from the consuming mills.

Q. Mr. Thurston, for the purpose of introducing into the record the major uses of cotton textiles, I would like to ask you if you are familiar with the publication known as "Cotton Counts Its Customers"? A. Yes.

Q. Published by the National Cotton Council. A. Yes.

Q. Would you describe very briefly the major uses of cotton as shown by this publication? A. Well, there are hundreds of uses of cotton which are listed in considerable detail in this very complete study put out by the National Cotton Council. In general, the uses are often grouped into three major categories: apparel, which is explanatory; household, sheets, pillow cases, towels, and the like; and industrial. The industrial uses cover a multitude of end uses of which, according to this study, taking what they have listed as the biggest uses of cotton in 1951, the first listed was automobile uses; next, sheets, shirts, men's trousers, bags, drapery, and upholstery, towels. It goes on then through men's underwear, rugs and carpets, retail piece goods. The full list takes several pages.

Q. I realize that. I just wanted to get just some general information on uses of cotton into the record.

Will you tell us if, in the normal case, cotton textiles are used in the State where they are produced or, normally,

do they flow into other States? A. Well, probably some portion of the cotton goods produced in any State is undoubted eventually used in that State, but I would say that the larger proportion would be used elsewhere.

21 Q. That the largest proportion would flow into other States? A. Would flow into commerce generally.

Q. In other words, a textile mill located, say, in the State of Georgia would find a market for its products in several other States? A. That's correct.

Q. And probably any or all of the 48 States? A. That's right.

Q. The same would be true of a mill located in Pennsylvania or Massachusetts or any other producing area? A. I would say so, yes.

Q. Do textile manufacturers generally produce products to be marketed in a limited geographic area? A. I would say not, with the possible exception of certain specialties, which would be small in relation to the industry as a whole.

Q. Generally, they produce products for a national market? A. Correct.

Q. Can you tell us, please, what part New York City plays in the marketing of textiles, cotton textiles? A. A very major, important part. Practically every mill has a selling representation in New York City, either of its own direct mill sales office or a commission house arrangement. By far the great majority of all cotton piece goods is merchandise marketed in New York City. The selling offices are there. In many cases there are branch offices of those same houses scattered throughout the country, in major distribution points, Atlanta, Dallas, Los Angeles, San Francisco, Chicago, St. Louis.

Q. The actual sales, for the most part, as accom-

22 plished in New York? A. That's right.

Q. Regardless of the location of the producing mill, the products of the mill would be marketed through New York? A. Correct.

Q. Since producers of specific categories of textiles are competing on the New York market for the same business, their prices must be competitive, regardless of where the goods are produced; isn't that true? A. That's correct. There will be different prices for different qualities.

Q. But that for a standard construction print cloth, there would not be any significant price differentials? A. That's right.

Q. Is that true? A. Yes.

Q. Whether the goods are produced in, say, South Carolina or Rhode Island or anyplace else? A. That's correct.

Q. The price would be substantially the same? A. Correct.

Q. For standard construction of goods? A. Yes.

Q. In summary, is it correct to say that textile distribution is on a nation-wide basis in the U. S., rather than limited to any geographic basis? A. I would say that that's correct.

Q. And likewise, that competition is nation-wide, rather than limited geographically? A. Yes, I would say so.

23 Q. One final question: Are some textile mill products advertised in national publications? A. Yes, especially household textiles; sheets, pollow cases, towels, and the like.

Q. Would you expect to find these products for sale in all parts of the country? A. Yes, I would expect that if a company is advertising a product in a magazine that has national distribution, that you would find the product being sold in the areas in which the magazine itself sold.

Mr. Kilcullen: Mr. Examiner, that concludes my question of Mr. Thurston, but before any cross examination of Mr. Thurston, I have a few exhibits here that I would like to offer at this time. I think this is an appropriate point at which to get these things in.

I offer as Government Exhibit No. 7 a copy of the July 1951 edition of Davison's Textile Blue Book, issued by the Davison Publishing Company, Ridgewood, New Jersey.

This volume, as stated by Mr. Thurston, is an authoritative trade directory of textile establishments. This volume shows producers of textiles in each broad category. It lists the manufacturers geographically, with a description of the items produced. Also, it lists various types of products with the names and addresses of plants engaged in the manufacture of such products. I have marked this Davison's Blue Book as Government Exhibit No. 7.

As Government Exhibit No. 8 I offer two tables showing the location by State in 1947 of establishments and employees in the textile industry. Table A presents this information for yarn and fabric mills and finishing plants, and Table B for miscellaneous textile goods, miscellaneous fabricated textile products. This information was obtained from the 1947 Census of Manufacturers, Volume 2, which I am offering here as Exhibit No. 9. Pages 152 through 169, and 195 through 203, and 243 through 251 of this volume contain the information tabulated in Exhibit No. 8, as well as other basic data on the industry, such as production and shipments of various textile items.

Government Exhibit No. 10 consists of a publication entitled "Facts For Industry," published by the Bureau of the Census, United States Department of Commerce.

Exhibit 10-A is a table entitled "Cotton Broad Woven Goods, 1951," which shows a number of tables relating to the production of cotton broad woven fabrics in the year 1951.

Exhibit 10-B is also a publication entitled "Facts For Industry," in four separate parts, which shows production of synthetic broad woven goods by quarters in 1951.

Exhibit No. 14 is a publication entitled "Cotton Counts Its Customers," which was issued by the National Cotton Council of America, dated May 1952.

Exhibit No. 12 consists of three tables which show the State of origin and destination of railroad carload traffic for three classes of textiles in the years 1949 and 1950. The classes of textiles covered are burlap bagging and

similar items, cotton and burlap bags, and cotton cloth and yarn. The data were computed by the Interstate Commerce Commission from audited waybills representing 1 per cent of carload traffic terminated by Class I railways in 1949 and 1950.

Since these tables are based upon full carload shipments by rail and do not include any shipments by motor carriers, they are merely illustrative of the movement of textiles, rather than fully representative of all textile shipments.

By way of illustration, Table C of this exhibit shows that Alabama shipped cotton cloth and yarn to the following States: California, Connecticut, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and Virginia; whereas New York received cotton cloth and yarn from the following States: Alabama, Connecticut, Georgia, Maine, Massachusetts, New York, North Carolina, Rhode Island, South Carolina, and Tennessee.

I also offer Government Exhibits 13-A and 13-B, consisting of the two publications which were the sources for the data contained in Exhibit No. 12. The publications were issued by the Interstate Commerce Commission, Bureau of Transport Economics and Statistics, and are entitled "Carload Waybill Analyses, 1949" and "Carload Waybill Analyses, 1950." I won't read the full titles of those. The documents are here for the examination of any person who desires to do so. I move that these exhibits be received in evidence.

Mr. Blakeney: Mr. Examiner, we have no objection to Exhibit 7.

As to Exhibits 8, 8-A, and 8-B, 9, 10, 10-A, and 10-B, 11, 12, 13, 13-A, and 13-B, we would like to reserve the opportunity of objection until we have had a chance to study these exhibits.

Presiding Officer Grant: All right, Mr. Blakeney.

Perhaps I should indicate for the record that I will receive them in evidence subject to such objection as you may make.

Mr. Blakeney: That's all right, sir.

(Whereupon, Government's Exhibits Nos. 7, 8, 9, 10-A, 10-B, 11, 12, 13-A, and 13-B were received in evidence.)

Mr. Blakeney: As to cross examination, I believe, sir, we have no questions to ask Mr. Thurston.

Presiding Officer Grant: Do you have any questions?

Mr. Barkin: If I may ask Mr. Thurston the following questions. I shall state them one at a time.

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QUESTIONING OF MR. A. HENRY THURSTON

By Mr. Barkin:

Q. First, does the cityof Philadelphia perform a function with respect to yarn such as the city of New York performs with respect to cotton broad goods? A. To a degree, yes. It is a merchandising center for carded cotton yarns and combed yarns.

Q. Do the yarns sold in the city of Philadelphia originate largely in the Southern States? A. When you say largely, I don't know; a lot of it would.

Q. Would you say that the preponderant proportion of sales yarn made in the United States is made in the Southern States and the Southeastern States? A. Of the carded yarns, yes.

Q. And of the sales yarn as such, is the largest part of that made in the Southern States, both carded and combed? A. I'm not so sure about the combed, but I'm quite certain that the preponderant production of carded sales yarn in the Southeastern States.

Q. The city of Philadelphia acts as a sales center for sales yarn, does it not? A. Correct.

Q. The definition of this industry contained in the Government's Exhibit 1-A includes as Item No. 3, an item called

"pile fabrics." Are such pile fabrics manufactured in different States of the country? A. No. 3 in the copy that I have refers to—I get it; yes. Yes, pile fabrics are made in more than one State.

Q. Are many of the products contained in this
27 classification No. 3 manufactured for the furniture and motor car and clothing industries? A. Most of the pile fabrics would be manufactured for upholstery purposes, either furniture upholstery or transportation upholstery; except for certain specialized lining uses, pile fabrics are not commonly a clothing fabric.

Q. The pile fabric that might be used in the upholstery of motor cars would consequently be sent to motor car assembly plants located through the United States? A. That's right.

Q. Moving down to No. 6, do you know whether cordage, rope, and twine are manufactured in the State of California? A. That's right.

Q. Those products may be consumed within the State or shipped out of that State? A. They may be. They tend to be consumed in the area, in the case of rope and twine, rather than moving as such things as cotton yarn and cotton print goods.

Q. Addressing ourselves to paper yarn and twine, those are manufactured in different parts of this country, are they not? A. That's right. They are made by paper mills.

Q. What's that? A. Paper yarn and twine are made by paper mills.

Q. We are talking here about the paper yarn and twine made in textile plants. A. Offhand, I don't remember any mill that I would call a textile plant that makes paper yarn and twine. There may be. It's a branch of the industry that I'm not too familiar with.

Q. Do you know of the paper yarn manufacturer
28 in Richmond? A. No.

Q. Philadelphia? A. No.

Q. Lawrence? A. I do recall, now, one mill. It is a rug

mill. It used to be in Lawrence, Massachusetts. I don't know whether they're still there, or not.

Q. The attorney for the Government inquired about national advertising. Do you recall having seen advertising in national magazines by companies located in New England? A. Yes.

Q. And the Southeastern States? A. Yes.

Q. And the Southwestern States? A. No.

Q. Have you ever seen the advertising of the Texas Textile Mills? A. I have never noticed it.

Mr. Barkin: That's all.

Presiding Officer Grant: Are there any other questions of Mr. Thurston?

Mr. Rankin: May I ask one or two questions?

Presiding Officer Grant: Yes.

By Mr. Rankin:

Q. Mr. Thurston, isn't it a fact that practically all cotton yarns and cotton goods are sold f.o.b. the mill and the title passes at the mill? A. That's correct.

Q. And isn't it a fact that there is very little cotton yarn or cotton goods produced in New York City?
29 A. I would say that none was produced in New York City.

Q. And isn't it a fact that while there are a great many mills that have offices or agencies or sell through brokers in New York City, there are also hundreds of mills that don't sell that way, particularly in yarns? A. Especially in yarns, and especially the smaller mills.

Q. And they sell right from their own mill in a great many States? A. Correct.

Q. That's true? A. Yes.

Q. And isn't it true that there is not very much, if any, national advertising of a great many items, yarns and certain types of greige goods and things like that? A. I think I said at the time that question was asked me, that

that applied especially to household textiles, sheets, pillow cases, towels, and the like.

Q. Yes. It's just the finished products which go into the home for domestic use generally that are advertised nationally? A. It would all be finished goods.

Q. Yes. A. Not either greige cloth or yarn, which the consumer does not come in contact with until further processing and finishing has been done.

Q. Are you familiar enough with it to answer this question: Isn't it true that most sales which are made in New York City are made subject to acceptance by the mill at the mill? Or, do you know that situation? A. I have been away from the New York market directly for so many years, I wouldn't attempt to answer that.

Mr. Barkin: That's all, sir.

Presiding Officer Grant: Gentlemen, let's have a five or 10-minute recess.

(Short recess.)

Mr. Kilcullen: Mr. Examiner, for the purpose of clarification of the record here, I would like to just ask Mr. Barkin if he would explain the meaning of the term "sales yarn" that he referred to in his questioning of Mr. Thurston.

Mr. Barkin: I would be happy to. The term "sales yarn" as we employed it in the examination of Mr. Thurston refers to yarn sold by cotton yarn manufacturers to the trade for use by other manufacturers, such as knit goods manufacturers, woven cloth manufacturers, insulated yarn braiders, and narrow fabrics manufacturers, and other producers who employ the yarn for the production of other products, usually textiles in character.

The term "sales" refers to the fact that the yarn is not employed by the manufacturer himself for further processing.

Presiding Officer Grant: If there are no further questions, thank you, Mr. Thurston.

(Witness excused.)

Mr. Kilcullen: I would like to call as a witness for the Government Mr. Maurice O'Conner, from the Quartermaster's Office.

Whereupon:

Maurice O'Conner,

appearing in behalf of the Government, made the following statement:

STATEMENT OF MR. MAURICE O'CONNER

By Mr. Kilcullen:

Q. Mr. O'Conner, will you please state for the record your name and your position with the Department of Defense? A. My name is Maurice I. O'Conner. I am Civilian Assistant Chief in the Procurement Division, Office of the Quartermaster General, Department of the Army.

Q. How long have you been connected with the Department of the Army? A. Approximately 30 years.

Q. In your work you have become familiar with the practices and procedures followed by the Army in regard to procurement of supplies? A. Yes, sir, I have.

Q. Government Exhibit 5 is an Awards List. It shows that the military agencies purchase large quantities of textiles. Will you please describe briefly and in general terms the purposes for which such purchases are made? A. Well, textiles are purchased almost wholly for supply to manufacturers of end items, such as clothing, tents, sleeping bags, and other equipage.

Q. The Army purchases the textiles and then furnishes them to manufacturers to make the end items? A. That's right. We only pay them for their labor and some miscellaneous findings, as a rule. We furnish the cloth on a bailment basis.

Q. This covers all the clothing items and equipage of various kinds? A. Yes, sir.

Q. Would you please describe briefly the manner in which a typical order for textiles is processed through the Office of the Quartermaster General? A. Well, studies are made to determine needs, and then, subject to the availability of funds, a directive to purchase is sent to the New York Quartermaster Procurement Agency in New York City.

The normal procurement method is to advertise for bids formally. That means that the bids are sealed, an hour and date is established for the public opening of them, and awards are made to the lowest responsible bidders.

Bids are solicited from all known manufacturers and suppliers of the item in question. Bidding lists are maintained for that purpose, but any additional suppliers or potential suppliers not on the list will be furnished a copy of the invitation upon application.

Q. These bidders lists to which you have referred, do they include textile firms operating mills in various States, or do you generally try to limit them to certain areas? A. No, sir. We solicit bids from all known manufacturers and producers and, in the case of the textile field, they are located in many different States.

Q. When you advertise for bids with regard to the procurement of a certain textile, do you usually get bids from textile firms located in various States? A. Yes, sir, we usually do.

Q. Do they come from quite a large number of States? A. Yes, sir, from many different States, as a rule.

Q. In awarding contracts, in the normal case are the contracts awarded to firms located in all of the various textile producing areas? A. Throughout a given year, I would say Yes, that manufacturers in all of the regions will get some business, depending, of course, upon the type of fabric that is produced.

Q. In the usual case, can the Office of the Quartermaster General ascertain at any time in advance of the receipt of

33 bids the place or places at which the goods will be produced? A. No, sir.

Q. They can't? A. No, sir. On the basis of prior bidding, though, we reasonably anticipate in a normal market where the bidding will be from; that is, what producing areas. The bidding follows a pattern, you know.

Q. In your experience, have you found that some textile firms that bid on Government contracts have more than one plant; that they may have various plants located in different places? A. Yes, that's true and, in addition, some manufacturers who have plants that are wholly owned also bid for other mills, other independently owned mills, and one or more of the bidder's own mills as well as one or more of the idependently owned mills for which he is submitting a bid may participate in the manufacture, if the quantity warrants.

Q. In such a case does the contractor have any choice as to which of the mills will produce the goods that he has bid on? A. Well, sometimes the bidder will reserve a choice or stipulate a particular portion to be produced at each of the mills he specifies. We usually require him to specify in his bid the point of production or at least the shipping point.

Q. But he can designate—— A. He can designate it.

Q. In other words, just to simplify the question: If a contractor had three or four plants located in different States or areas of the country, it's up to him to determine where he will have the particular goods produce? A. That's right.

Q. All that is required is that he designate in the
34 contract the place, the source of the goods? A. Well, yes. We're mainly concerned about the point of shipment, from the standpoint of comparison of bid costs in connection with freight rate computation. That's why we want to know the shipping point, in the event we're asking for bids either f.o.b. origin or f.o.b. origin as well as f.o.b. destination.

Q. Do you usually invite bids on two different bases: f.o.b. origin and f.o.b. destination? A. Well, if the destination is firm, that is, if we know where we are going to store the goods—and they're usually stored prior to issue to end item manufacturers—we solicit bids under Department of Defense regulations on both an f.o.b. origin and an f.o.b. destination basis, and we compute the cost of shipment to us and add it to the f.o.b. origin price, and whichever price is lower is the basis of the award.

Q. Yes. Getting back to my previous question, if a firm had more than one mill, would it be likely or is it possible that a single contract could be performed in several mills? A. Yes, sir.

Q. It could? A. Yes, sir.

Q. You referred to the designation of delivery point in invitations. Does that limit in any way the areas from which bids are received. A. No, sir, it does not.

Q. You designate a certain Quartermaster Depot as the point of destination. You may receive bids from all over the country? A. Yes.

Q. Can you give us any information as to the areas in which military textile items are procured and where the end items are fabricated? A. I think I have something on that here.

Well, according to our studies, approximately 86.3 per cent of the total potential yardage comes from the Southeastern States of South Carolina, North Carolina, Georgia, and Alabama, and we store such product approximately 67 per cent in the same general area at Memphis General Depot, Memphis, Tennessee, Atlanta General Depot, Atlanta, Georgia, and Charlotte Q. M. Depot, Charlotte, North Carolina.

Then, as to the cut, make, and trim, the potential covers 41 States, with approximately 45 per cent covered by the industrial Northeastern seaboard; the South and Middle Atlantic account for approximately 20 per cent each; and

the Southwest and Pacific Coast areas each account for somewhat less than 10 per cent.

Q. Mr. O'Conner, to your knowledge are the procurement procedures of the Navy substantially similar to those followed by the Office of the Quartermaster of the Army? A. Yes, sir; they must be because the Army, Navy, and Air Force are under the same —operate under the same procurement regulations, known as the Armed Services Procurement Regulations, and the same basic law, Public Law 413, 80th Congress.

Q. You referred here to bidders lists that are maintained by the Office of the Quartermaster General. We have obtained from that office in New York the current list of bidders for a certain group of textiles. I will just read it very briefly: Blankets, cotton; burlap and/or tubing; cotton cloth, balloon, buckram, denim, duck, jean, muslin, percale, print, sateen, seersucker, sheeting, herringbone twill, and uniform twill; also hair cloth; osnaburg; oxford; rayon and nylon; collar stiffening; interlining; shoe laces; sheets; cotton thread; linen thread; hand and dish towels; cotton webbing; and cotton yarn.

Will you please identify this for the record, Mr. O'Conner?

(Documents handed to the witness.)

A. Yes, sir. These are mailing lists of the New York Quartermaster Procurement Agency in New York City. It's our Quartermaster purchasing office.

Mr. Kilcullen: Mr. Examiner, I have marked this as Government Exhibit No. 14.

By Mr. Kilcullen:

Q. Mr. O'Conner, Government Exhibit No. 15 consists of a listing of selected textiles purchased by the New York Quartermaster Procurement Office, which shows the procurement directive number in each case, the number of bidders solicited, the number of bids received, and the number of contracts awarded under specific procurement direc-

tives in the years 1951 and 1952; and along with that we have here 29 separate envelopes, each containing for each of the procurement numbers listed here a summary of the successful and unsuccessful bidders, showing the location of plants listed by bidders as the place of proposed production; also a copy of the bid invitation sent out by the Office of the Quartermaster General, and abstracts of bids received in response to invitations.

I will ask you to look at these and indicate whether you recognize these as being official documents of the Quatermaster's Office?

(Documents handed to the witness.)

Q. Mr. O'Conner, in the interest of saving time—I notice that you have gone through several of those—those exhibits will be here on the desk for the examination of any person who is interested in looking at them. They are photostatic copies of documents which were obtained from the Quartermaster's Office and, rather than take the time to go through all the rest of them, if you could indicate
37 what you have ascertained from the examination of those that you have looked at, it would probably save time, unless there is some objection here from someone. A. Well, all those I have examined are the documents that you mentioned. They're the abstracts of bids, the invitation for bids, with an indication of the successful—the name of the successful as well as the unsuccessful bidders on the particular procurements. They are our official records of the New York Quartermaster Procurement Office.

Q. Mr. O'Conner, I wonder if you would just select a couple of those and read off the information relating to the type of textile that was involved in the bidding and the location of the bidders, and also the location of the firms to whom the contracts were awarded? A. Well, this one on top is for cotton bed sheets, 63 by 108. We solicited bids from 54 potential bidders. We received 18 bids. The bids were opened—this was a formal invitation to open 19

July 1951, and the awards were made on the 25th of July 1951. There were nine successful bidders and nine unsuccessful bidders. The locations of the successful bidders were Wappinger Falls, New York; Nashua, New Hampshire; Spray, North Carolina; Whitney, South Carolina; Peabody, Massachusetts; Yadkin, North Carolina; Thomaston, Georgia; Danville, Virginia; Thomaston, Georgia; Lewiston, Maine. The unsuccessful bidders' locations were Duncan, South Carolina; Lancaster, South Carolina; Nashua, New Hampshire; Durham, North Carolina; Macon, Georgia; Kannapolis, North Carolina; Sand Springs, Oklahoma; and there were several others of the unsuccessful bidders whose point of manufacture is not indicated, three of whom are dealers.

Q. That contract was for bed sheets? A. Yes, sir, bed sheets.

38 Would you give us the directive number of that? A. Yes, sir. That's procurement directive number NY-1-0010-00-2-07.

Q. Would you mind running through a few more of those? A. All right, sir.

Q. For the purpose of indicating. A. This is one for cloth, cotton, wind resistant, Oxford, 6.5-ounce. The procurement directive number is NY-1-0365-00-2-07.

Bids were solicited from 55 firms; 23 bids were received. The bids were opened on 20 February 1952 and the award was made March 6, 1952. There were four successful bidders and 19 unsuccessful bidders.

The plant locations of the successful bidders are Wallace, South Carolina; Hartsville, South Carolina; Lanett, Alabama; and the next one is Lanett, Alabama.

The plant locations of the unsuccessful bidders are Millville, New Jersey; East Hampton, Massachusetts; Wauregan, Connecticut; East Hampton, Massachusetts; Saylesville, Rhode Island; Hillsboro, North Carolina; Greensboro, North Carolina; New Milford, Connecticut; there is one not indicated, except that it's a North Carolina or Virginia

plant, in the alternative—that's the type of case you mentioned earlier—Knoxville, Tennessee; and Memphis, Tennessee for the next one; Rock Hill, South Carolina. Here is another one; here is a duplicate offer, New Bedford, Massachusetts and Saylesville, Rhode Island. That's the finishing, Saylesville, Rhode Island. Shelby, North Carolina and Lanett, Alabama; Lanett, Alabama is the finishing. Shelby, North Carolina; Cherryville, North Carolina; Shelby, North Carolina; Lanett, Alabama—that's the finishing plant—Clevedale, South Carolina; Fall River, Massachusetts, with finishing at Memphis, Tennessee; Clevedale, South Carolina; Kannapolis, North Carolina, and finishing at Yadkin, North Carolina; and Union Bleachery at Greenville, South Carolina, Saylesville, Rhode
39 Island; that's the bleachery; the greige goods mill location is not indicated on that last one.

Do you want another one?

Q. Yes, sir. I would like to get some representative types of textiles. A. Well, this next one on here, the order is duck. Everybody in the country was on this one.

Maybe you could summiarize the information instead of reading each particular one. A. Yes, sir. Well, this is for cloth, cotton, duck, covered by P. D. NY-1-0220-00-2-07. Now, part of this procurement was effected by negotiation and part by formal advertising. Approximately 80 per cent of the business was placed by negotiation and 20 per cent by formal advertising. On the formally advertised part, we solicited bids from 566 and we received 85 bids.

Now, this summary doesn't show how many contractors there were. This is a summary of both the negotiated and the formally bid combined. In this case some converted mills participated in the procurement, carpet mills and other converted mills. I would say there are approximately 90 contractors involved in this procurement and they seem to be located in practically all of the textile producing States; Alabama—this is a finishing plant, I guess—

New Britain, Connecticut; Poughkeepsie, New York; North Carolina; Georgia; Maryland; Memphis; South Carolina; Maryland—that's finishing plant—Alabama; Rhode Island; South Carolina; Poughkeepsie, New York—finishing—Kentucky; Jersey City, New Jersey; West Warwick, Rhode Island; Memphis, Tennessee; Coshocton, Ohio; Princeton, New Jersey; Pennsylvania; New Hampshire; Texas; Wisconsin; Massachusetts Connecticut; Tennessee; I think that's all the States, locations in the various States.

Q. Now, will you take just one or two more, sir, and see if we have any other items? A. All right. This one is for cloth, cotton, uniform, twill and it's a combination of the requirements covered by two procurement directives; the first one is NY-1-0180-00-2-07, and the other is identical with the exception that it's 0099.

Now, 104 bids were solicited and 24 bids were received. There were five successful bidders; one, Memphis; one, Danville, Virginia; one, Cleveland, South Carolina; Spartanburg, South Carolina; and one location is not indicated.

Now, the unsuccessful bids were received from plants in South Carolina; Rhode Island; North Carolina; Pennsylvania; Tennessee; Massachusetts; Pennsylvania; Delaware.

This one is for cloth, cotton, fine, plain, balloon, procurement directive NY-1-0252-00-2-07. We solicited bids from 100 firms. Seventeen bids were received. There were five successful bidders.

The plant locations are shown as South Carolina; Rhode Island; Maine; Tennessee; Rhode Island; South Carolina.

The unsuccessful bidders' plant locations are shown as South Carolina; New Jersey—that's a finisher—Rhode Island—finisher—next one not available; New Jersey; Saylesville, Rhode Island; New Bedford, Massachusetts for the greige goods; Lonsdale, Rhode Island; Carlton Hill, New Jersey—that's the finisher for Lonsdale, Rhode Island—Bradford, Rhode Island and Saylesville, Rhode Island—those are both finishers; the location of the greige

goods plant is not shown; New Milford, Connecticut; Carlton Hill, New Jersey.

Those are the ones I looked at.

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42 QUESTIONING OF MR. MAURICE O'CONNER

By Mr. Gorman:

Q. Is it the inflexible policy of the procurement to
43 award all textile contracts to the lowest bidder? A. Well, that's the general rule, Mr. Gorman, to award to the lowest bidder. That is varied, however, to some extent due to particular circumstances. Now, if you have a requirement, for example, of 10,000,000 yards of a given fabric, the lowest bid may be submitted by a man who offers only 3,000,000, so you may have to go up the ladder and place business at varying prices to meet your requirements, to obtain the 10,000,000 yards.

Then there are other occasions when, to broaden the industrial base for a given item, price differentials will be paid to develop that additional base of supply.

Does that answer your question, sir?

Q. It doesn't necessarily follow that all textile contracts go to the lowest bidder? A. Not 100 per cent, but the general rule is that the awards go to the lowest bidder, subject to those qualifications I just stated, but they're the exception rather than the rule; especially the broadening of the base aspect.

By Presiding Officer Grant:

Q. Does that explain the fact that I think you found in practically all of the instances which you testified about, Mr. O'Conner, as I remember, that there were more than one successful bidder in each one of those instances? A. That's right. Because we didn't have an offer from one mill for the entire quantity, so you have to go up the ladder in that case. You may start at $1 a yard, pay $1.01, $1.03, up to

$1.05, or it may be $1.08, to get enough to meet the total requirements. It happens in shoes, too, and other items.

Q. If there were five so-called successful bidders,
44 that means they were the five lowest bidders? A. That's right, the five lowest.

By Mr. Gorman:

Q. Mr. O'Connor, you were a member of the Committee on the Surplus Manpower hearing some months ago when the attempt was made to secure textile contracts for designated distress textile areas. This was in March, I believe. Could you tell me if there has been any change in the procurement policy since that time in regard to the distress textile areas? A. Well, aren't you familiar with the notification put out by the Office of Defense Mobilization?

Q. I've seen quite a few notices, but I'm not quite clear yet whether or not there was any special treatment given to the distress textile areas. A. Well, I doubt that this is the proper forum for discussion of that. I would like to ask of the Examiner.

Presiding Officer Grant: I don't know whether it affects this purchasing practice, or not.

The Witness: From a price standpoint, the answer is that the O.D.M. decision made no change. There is no provision made for any price differential.

By Mr. Gorman:

Q. Well, has there been any attempt made to negotiate a contract? A. Sir?

Q. Has there been any difference in the question of negotiated contracts with reference to the advertised bids to the lowest bidders? A. Well, whether there is a change in the method of advertising will not affect the price, because there has been no provision for any price. So regardless of
45 whether we solicit bids by formal advertising or by negotiation, under the O.D.M. notification covering

the textile industry, there will be no provision for price differential. So the only way under which a price differential would be paid would be under the circumstances that I cited here a minute ago to you; if we were in the market for 10,000,000 yards and the lowest responsible bidder offered only 3,000,000, we would have to go up the ladder to get the balance of 7,000,000, and that same practice would be followed whether we negotiated the procurement or advertised it formally.

Q. You don't know, really, whether there has been any change? A. There has been no change as far as price is concerned, Mr. Gorman, and as a matter of fact, our procurement of textiles currently is on a formally advertised basis. But there is a provision for set aside applications, applications can be submitted after issuance of the invitation for bids, set aside for a portion of the procurement quantity, for negotiation, and such applications will be considered on a case by case basis. We have had none so far since we have received the instructions from O.D.M. We have had no change. At the moment we are on a formally advertised basis.

Q. Just one more question, Mr. O'Conner. Does Procurement take into consideration the basic policy of the Public Contracts Act as confirmed by the Supreme Court in Perkins v. Lukens; namely, that the Act's purpose is "to impose obligations upon those favored with Government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment"? My question is: In awarding your public contracts, textile contracts, does Procurement take into consideration that policy of the Act?

A. I am not familiar with that case you cited, Mr.
46 Gorman. Our contracts which are subject to the Walsh-Healey Act contain the standard Walsh-

Healey stipulation, with which you are undoubtedly familiar. I know nothing—I am not familiar with that case you cited at all.

Q. Well, it happens to be the basic principle of this Act we're discussing here. A. Well, the policy aspect of the Act is not the consideration of the award of the contract. The contract is awarded subject to the representations and stipulations of Walsh-Healey. That's one of the many clauses in the contract.

Mr. Gorman: We feel, Mr. Chairman, that there has not been an equitable distribution of textile contracts by Procurement. We feel that strongly, and I think an examination of this document made part of the record here will demonstrate that contracts go to, in the main, the low wage, low standard mills, particularly in the Southeast and Southwest. I would like to know from Procurement, through Mr. O'Conner, if there isn't something we can do to prevent this apparent discrimination against mills that are paying comparatively decent wages and give their workers decent conditions. I wonder if the Quartermaster Corps, Procurement, takes this question into consideration? If they do not, it certainly is their duty to point out that it is the basic principle of the Public Contracts Act that the workers producing the goods for the Army and the Navy and for the Government, they should receive decent conditions at least on a par with the conditions established by the unions.

The Witness: Well, as I said before, Mr. Gorman, we include the standard clause, the clause that is standard for all Government contracts, regardless of the item purchased, where the Walsh-Healey Act is applicable.

Presiding Officer Grant: Are you required by law
47 to award the contract to the lowest bidder?

The Witness: Yes, sir, with certain exceptions, such as a broadening of the industrial base. Shortly after Korea we did, in the case of some cotton duck, to broaden the base of supply and to build up an adequate stock in as

short a time as possible, we paid carpet mills and drapery mills more for the identical duck item than we paid the regular industry. They had conversion costs and lower production rates on some of those items. But that was to meet a particular military objective and not from the standpoint—from a sociological standpoint of the wage approach.

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EXCERPTS FROM GOVT. EXHIBIT 20 •

(Corrected Copy)

U.S. DEPARTMENT OF LABOR
Bureau of Labor Statistics
Washington 25, D. C.

TABLE 5A: Percentage Distribution of Establishments and Production Workers in Cotton and Synthetic Textile Mills, by Minimum Job Rates, United States and Selected Regions, March 1952

Minimum rate (in cents)	United States 1/		New England		Middle Atlantic		Southeast		Southwest	
	Establishments	Workers	Establishments	Workers	Establishments	Workers	Establishments	Workers	Establishments	Workers
75	3.9	3.8	0.7	0.8	1.8	3.2	4.9	4.2	8.0	10.3
78	.3	.3	-	-	-	-	.4	.4	-	-
80	2.4	2.4	.7	.1	3.7	4.0	2.3	2.7	-	-
81	.2	.1	-	-	-	-	-	-	8.0	5.7
82	.2	.1	-	-	-	-	.1	.1	4.0	4.2
83	1.9	1.3	-	-	-	-	2.5	1.3	8.0	8.2
84	1.0	2.3	-	-	-	-	1.4	2.8	4.0	4.1
85	3.4	1.6	.7	.2	9.2	6.7	1.3	1.2	16.0	12.3
86	.8	.4	-	-	.7	.5	1.0	.4	-	-
87	3.5	2.6	-	-	.7	1.2	5.4	3.1	4.0	2.2
88	2.4	1.7	-	-	-	-	4.1	2.2	-	-
89	2.9	3.0	-	-	-	-	3.3	3.1	20.0	27.0
90	3.4	1.5	.7	.5	8.1	5.2	2.5	1.5	-	-
91	1.0	.4	-	-	-	-	1.6	.5	-	-
92	2.0	3.2	-	-	-	-	3.3	4.0	-	-
93	2.7	4.5	-	-	1.1	1.2	4.1	5.5	-	-
94	1.2	2.9	-	-	-	-	2.0	3.6	-	-
95	3.5	3.7	2.7	.7	5.1	4.9	3.0	4.0	-	-
96	3.4	3.1	-	-	2.2	1.2	4.8	3.8	-	-
97	4.2	3.0	-	-	1.5	.9	6.4	3.7	-	-
98	.3	.3	-	-	-	-	.6	.3	-	-
99	1.5	2.1	-	-	-	-	2.5	2.6	-	-
100	6.4	6.8	-	-	12.9	9.0	5.2	7.4	8.0	20.4
101	.8	3.1	-	-	-	-	1.3	3.8	-	-
102	6.6	7.4	1.4	.3	.7	.3	10.7	9.1	-	-
103	2.2	2.5	-	-	-	-	3.6	3.1	-	-
103.5	3.8	12.0	-	-	-	-	6.4	15.0	-	-
104	2.0	1.4	-	-	-	-	3.0	1.4	-	-
105	2.9	1.6	4.8	2.0	4.8	2.9	1.6	1.4	4.0	3.9
106	.3	.4	.7	2.7	.7	.4	-	-	-	-
107	1.0	.9	4.8	2.7	-	-	.6	.7	-	-
108	.1	.2	-	-	-	-	.1	.3	-	-
109	.3	.1	-	-	-	-	.4	.2	-	-
110	2.1	1.6	7.5	1.3	2.6	2.2	.9	1.7	-	-
111	.4	.4	3.4	3.0	-	-	-	-	-	-
112	.9	.5	-	-	3.3	6.8	.1	.1	-	-
113	1.2	.3	-	-	4.8	3.0	.1	.2	-	-
114	2.3	2.3	8.9	14.5	4.8	10.5	-	-	-	-
115	1.1	.8	.7	2.8	4.4	8.4	-	-	-	-
116	.3	.1	-	-	1.1	1.2	-	-	-	-
116.5	3.3	5.2	25.3	44.6	.4	.4	-	-	-	-
117	1.[illegible]	1.2	5.5	6.4	3.3	7.0	-	-	-	-
Over 117	6.[illegible]	2.6	28.1	15.5	10.7	11.4	.4	.1	-	-
No established minimum	8.4	4.3	3.4	1.9	11.4	7.5	8.1	4.5	4.0	1.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Number of establishments	1,145		146		272		691		25	
Number of workers	485,367		56,490		89,548		387,060		8,590	

1/ Includes data for other regions in addition to those shown separately.

(WH53-229).

TABLE 7A: Distribution of Establishments and Workers 1/ in Cotton and Synthetic Textile Mills According to the Number of Production Workers (Excluding Learners and Handicapped Workers) Earning Less Than Specified Amounts Pe
United States and Selected Regions, March 1952 - Continued

Percent of all production workers earning less than specified amounts	United States 2/					New England					Middle Atlantic				
	Establishments		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts	Establishments		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts	Establishments		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts
	Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent	
Less than 100 cents per hour															
0	394	34.4	132,977	27.6	0	128	87.7	47,875	84.0	0	139	51.2	16,239	56.3	0
0.1 - 1.0	67	5.9	76,640	15.9	211	10	6.8	7,893	13.9	24	9	3.3	2,892	7.9	14
1.1 - 3.0	58	4.5	214,234	5.0	699	-	-	-	-	-	18	6.6	1,714	5.9	32
3.1 - 5.0	72	6.3	42,614	8.8	1,543	1	.7	458	.8	22	7	2.6	672	2.3	25
5.1 - 10.0	118	10.3	68,450	14.2	4,747	4	2.7	400	.7	24	9	3.3	727	2.5	61
10.1 - 25.0	119	10.4	40,470	8.4	7,385	1	.7	290	.5	49	11	4.0	2,691	7.2	141
25.1 - 50.0	129	11.3	55,731	11.6	20,662	2	1.4	68	.1	22	55	20.2	3,928	13.7	1,508
50.1 and over	194	16.9	40,899	8.5	89,119	-	-	-	-	-	24	8.8	1,227	4.2	999
Total, all plants	1,145	100.0	482,015	100.0	64,366	146	100.0	56,984	100.0	141	272	100.0	28,890	100.0	3,080
Less than 103 cents per hour															
0	305	26.6	98,904	20.3	0	124	85.0	47,334	83.1	0	117	43.1	14,665	50.6	0
0.1 - 1.0	44	3.8	47,489	9.9	131	5	3.4	6,091	10.7	25	5	1.8	1,167	4.0	6
1.1 - 3.0	31	2.7	7,223	1.5	176	5	3.4	692	1.2	15	19	7.0	2,088	7.2	39
3.1 - 5.0	49	4.3	30,921	6.4	2,518	2	1.4	627	1.1	30	15	5.5	1,758	6.1	75
5.1 - 10.0	56	4.9	41,238	8.6	3,025	4	2.7	400	.7	36	7	2.6	447	1.5	36
10.1 - 25.0	138	12.1	82,680	17.2	14,100	1	.7	1,310	2.3	262	14	5.1	1,550	5.4	275
25.1 - 50.0	237	20.7	104,708	21.6	39,161	4	2.7	240	.4	108	48	17.6	3,684	12.8	1,589
50.1 and over	285	24.9	69,758	14.5	48,479	1	.7	290	.5	177	47	17.3	3,571	12.4	2,690
Total, all plants	1,145	100.0	482,015	100.0	107,590	146	100.0	56,984	100.0	653	272	100.0	28,890	100.0	4,710
Less than 110 cents per hour															
0	191	16.7	48,055	10.0	0	94	64.5	34,460	60.4	0	92	33.8	12,119	41.9	0
0.1 - 1.0	19	1.7	13,491	2.8	36	11	7.5	11,141	19.6	27	7	2.6	2,050	7.1	8
1.1 - 3.0	41	3.6	11,171	2.3	861	7	4.8	2,274	4.0	51	29	10.7	2,887	10.0	60
3.1 - 5.0	25	2.2	7,045	1.5	1,554	3	2.1	2,350	4.1	91	18	6.6	1,931	6.7	83
5.1 - 10.0	15	1.3	2,714	.6	248	5	3.4	435	.8	39	7	2.6	364	1.3	29
10.1 - 25.0	125	10.9	87,350	18.1	16,283	17	11.6	4,838	8.5	725	17	6.3	1,526	5.3	270
25.1 - 50.0	264	23.1	164,302	34.0	58,451	4	2.7	240	.4	108	51	18.7	3,966	13.7	1,672
50.1 and over	465	40.5	147,861	30.7	100,878	5	3.4	1,246	2.2	781	52	18.7	4,047	14.0	2,936
Total, all plants	1,145	100.0	482,015	100.0	177,711	146	100.0	56,984	100.0	1,822	272	100.0	28,890	100.0	5,058
Less than 116 cents per hour															
0	133	11.6	31,543	6.5	0	80	54.8	27,070	47.6	0	53	19.5	4,473	15.5	0
0.1 - 1.0	15	1.3	13,387	2.8	30	12	8.2	12,307	21.6	25	3	1.1	1,080	3.7	5
1.1 - 3.0	14	1.2	3,627	.8	54	1	.7	1,616	2.8	25	10	3.7	1,618	5.6	23
3.1 - 5.0	9	.8	3,261	.7	147	3	2.1	2,040	3.6	95	5	1.8	533	1.8	24
5.1 - 10.0	16	1.4	2,807	.6	190	1	.7	1,723	3.0	98	15	5.5	1,084	3.8	92
10.1 - 25.0	63	5.5	25,420	5.3	5,383	17	11.6	5,300	9.3	755	40	14.7	3,765	13.0	742
25.1 - 50.0	206	18.0	134,941	28.0	53,008	17	11.6	3,321	5.8	1,482	33	12.1	4,797	16.6	1,770
50.1 and over	689	60.2	267,089	55.4	183,369	15	10.3	3,607	6.3	2,218	113	41.6	11,540	40.0	8,147
Total, all plants	1,145	100.0	482,015	100.0	242,181	146	100.0	56,984	100.0	4,698	272	100.0	28,890	100.0	10,803

1/ These earnings include those of watchmen, janitors, and other custodial workers.
2/ Includes data for other regions in addition to those shown separately.

of Establishments and Workers 1/ in Cotton and Synthetic Textile Mills According to the Number and Percent
tion Workers (Excluding Learners and Handicapped Workers) Earning Less Than Specified Amounts Per Hour,
United States and Selected Regions, March 1952 - Continued

New England					Middle Atlantic					Southeast					Southwest				
Establishments		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts	Establishments		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts	Establishments		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts	Establishments		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts
Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent	
128	87.7	47,875	84.0	0	139	51.2	16,239	56.3	0	122	17.7	66,243	17.2	0	3	12.0	2,026	21.1	0
10	6.8	7,893	13.9	24	9	3.3	2,892	7.9	14	47	6.8	66,243	17.2	171	-	-	-	-	-
-	-	-	-	-	18	6.6	1,714	5.9	32	34	4.9	22,520	5.9	667	-	-	-	-	-
1	.7	458	.8	22	7	2.6	672	2.3	25	64	9.3	41,468	10.8	1,496	-	-	-	-	-
4	2.7	400	.7	24	9	3.3	727	2.5	61	103	14.9	65,771	17.1	4,576	-	-	-	-	-
1	.7	290	.5	49	11	4.0	2,691	7.2	141	104	15.1	37,552	9.8	6,812	-	-	-	-	-
2	1.4	68	.1	22	55	20.2	3,928	13.7	1,508	67	9.7	50,667	13.2	18,799	2	8.0	328	3.9	112
-	-	-	-	-	24	8.8	1,227	4.2	999	150	21.6	33,636	8.8	24,191	20	80.0	6,036	72.0	3,929
146	100.0	56,984	100.0	141	272	100.0	28,890	100.0	3,080	691	100.0	384,108	100.0	56,672	25	100.0	8,390	100.0	4,041
124	85.0	47,334	83.1	0	117	43.1	14,665	50.6	0	61	8.8	35,123	9.1	0	1	4.0	328	3.9	0
5	3.4	6,091	10.7	25	5	1.8	1,167	4.0	6	34	4.9	40,231	10.5	100	-	-	-	-	-
5	3.4	692	1.2	15	19	7.0	2,088	7.2	39	7	1.0	4,443	1.2	122	-	-	-	-	-
2	1.4	627	1.1	30	15	5.5	1,758	6.1	75	32	4.6	28,536	7.4	2,113	-	-	-	-	-
4	2.7	400	.7	36	7	2.6	447	1.5	36	43	6.2	38,879	10.1	2,865	-	-	-	-	-
1	.7	1,310	2.3	262	14	5.1	1,550	5.4	275	123	17.8	79,820	20.8	13,563	-	-	-	-	-
4	2.7	240	.4	108	48	17.6	3,684	12.8	1,589	179	25.9	98,571	25.7	34,778	3	12.0	1,886	22.5	545
1	.7	290	.5	177	47	17.3	3,571	12.4	2,690	212	30.8	56,542	15.2	40,644	21	84.0	6,176	73.6	4,319
146	100.0	56,984	100.0	653	272	100.0	28,890	100.0	4,710	691	100.0	384,108	100.0	96,105	25	100.0	8,390	100.0	4,864
94	64.5	34,460	60.4	0	92	33.8	12,119	41.9	0	5	.7	1,476	.4	0	-	-	-	-	-
11	7.5	11,141	19.6	27	7	2.6	2,050	7.1	8	-	-	-	-	-	-	-	-	-	-
7	4.8	2,274	4.0	51	29	10.7	2,887	10.0	60	5	.7	6,010	1.6	150	-	-	-	-	-
3	2.1	2,350	4.1	91	18	6.6	1,931	6.7	83	4	.6	2,764	.7	1,380	-	-	-	-	-
5	3.4	435	.8	39	7	2.6	364	1.3	29	3	.4	1,941	.5	180	-	-	-	-	-
17	11.6	4,838	8.5	725	17	6.3	1,526	5.3	270	90	13.0	80,692	21.0	15,238	-	-	-	-	-
4	2.7	240	.4	108	51	18.7	3,966	13.7	1,672	202	29.2	156,406	40.7	55,373	3	12.0	2,086	24.1	854
5	3.4	1,246	2.2	781	51	18.7	4,047	14.0	2,936	382	55.4	134,819	35.1	91,176	22	88.0	6,364	75.9	5,041
146	100.0	56,984	100.0	1,822	272	100.0	28,890	100.0	5,058	691	100.0	384,108	100.0	163,197	25	100.0	8,390	100.0	5,895
80	54.8	27,070	47.6	0	53	19.5	4,473	15.5	0	-	-	-	-	-	-	-	-	-	-
12	8.2	12,307	21.6	25	3	1.1	1,080	3.7	5	-	-	-	-	-	-	-	-	-	-
1	.7	1,616	2.8	25	10	3.7	1,618	5.6	23	3	.4	393	.1	6	-	-	-	-	-
3	2.1	2,040	3.6	95	5	1.8	533	1.8	24	1	.1	688	.2	28	-	-	-	-	-
1	.7	1,723	3.0	98	15	5.5	1,084	3.8	92	-	-	-	-	-	-	-	-	-	-
17	11.6	5,300	9.3	755	40	14.7	3,765	13.0	742	62	.9	16,355	4.3	3,886	-	-	-	-	-
17	11.6	3,321	5.8	1,482	33	12.1	4,797	16.6	1,770	151	21.9	124,349	32.4	48,669	1	4.0	328	3.9	156
15	10.3	3,607	6.3	2,218	113	41.6	11,540	40.0	8,147	530	76.7	242,323	63.0	165,293	24	96.0	8,062	96.1	6,460
146	100.0	56,984	100.0	4,698	272	100.0	28,890	100.0	10,803	691	100.0	384,108	100.0	217,982	25	100.0	8,390	100.0	6,616

custodial workers.
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U.S. DEPARTMENT OF LABOR
Bureau of Labor Statistics
Washington 25, D. C.

TABLE 7Ae Distribution of Establishments and Workers 1/ in Cotton and Synthetic Textile Mills According to the Number and Percent of Production Workers (Excluding Learners and Handicapped Workers) Earning Less Than Specified Amounts Per Hour, United States and Selected Regions, March 1952

Percent of all production workers earning less than specified amounts	United States 2/				New England				Middle Atlantic				Southeast			
	Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts	
	Establishments	Number	Percent	Number	Percent	Establishments	Number	Percent	Number	Percent	Establishments	Number	Percent	Number	Percent	Establishments	Number	Percent	Number	Percent
Less than 80 cents per hour																				
0	1,080	89.1	425,021	58.1	0	143	97.9	56,458	99.1	0	244	89.8	26,649	92.2	0	605	87.6	331,956	86.4	0
0.1 - 1.0	44	3.6	33,193	4.5	0	2	1.4	-	-	-	2	.7	376	1.3	2	41	5.9	32,579	8.5	1
1.1 - 3.0	46	4.0	18,174	2.5	3	3	2.1	586	1.0	9	4	1.5	481	1.7	6	35	5.1	15,990	4.2	8
3.1 - 5.0	1	.1	459	.1	0	-	-	-	-	-	1	.4	459	1.6	0	-	-	-	-	-
5.1 - 10.0	10	.9	2,410	.5	0	-	-	-	-	-	5	1.8	1,641	1.7	1	5	.7	1,916	.5	1
10.1 - 25.0	14	1.2	891	.2	0	-	-	-	-	-	11	4.0	231	.8	3	-	-	-	-	-
25.1 - 50.0	10	.9	1,867	.4	0	-	-	-	-	-	5	1.8	200	.7	0	5	.7	1,667	.4	0
50.1 and over	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total, all plants	1,145	100.0	482,015	100.0	3	148	100.0	56,984	100.0	9	272	100.0	28,890	100.0	12	691	100.0	384,108	100.0	10
Less than 85 cents per hour																				
0	828	72.2	325,954	67.6	0	141	96.5	54,876	96.3	0	219	80.5	25,179	87.2	0	444	64.3	236,767	61.7	0
0.1 - 1.0	104	9.1	85,196	17.7	3	2	1.4	1,582	2.8	2	-	-	-	-	-	100	14.5	83,408	21.7	3
1.1 - 3.0	67	5.9	33,882	7.0	3	1	.7	458	.8	11	7	2.6	656	2.3	11	59	8.5	32,768	8.5	31
3.1 - 5.0	38	3.3	9,580	2.0	0	-	-	-	-	6	6	2.2	533	1.8	22	32	4.6	9,047	2.4	0
5.1 - 10.0	25	2.2	10,134	2.1	3	2	1.4	68	.1	6	3	1.1	297	1.0	28	19	2.7	9,689	2.5	68
10.1 - 25.0	50	4.4	12,366	2.6	2	-	-	-	-	2	22	8.1	1,505	5.2	260	27	3.9	10,580	2.7	1,681
25.1 - 50.0	26	2.3	3,909	.8	1	-	-	-	-	1	12	4.4	459	1.6	142	6	.9	1,876	.5	576
50.1 and over	7	.6	954	.2	0	-	-	-	-	1	3	1.1	261	.9	204	4	.6	693	.2	383
Total, all plants	1,145	100.0	482,015	100.0	6	146	100.0	56,984	100.0	19	272	100.0	28,890	100.0	667	691	100.0	384,108	100.0	4,589
Less than 87 cents per hour																				
0	774	67.6	317,475	66.0	0	141	96.5	54,876	96.3	0	195	71.7	22,465	77.7	0	421	60.9	232,762	60.5	0
0.1 - 1.0	94	8.2	78,527	16.3	2	2	1.4	1,582	2.8	2	6	2.2	1,452	5.0	7	83	12.0	74,743	19.5	855
1.1 - 3.0	88	7.7	37,304	7.7	3	-	-	-	-	-	7	2.6	388	1.3	7	81	11.7	36,913	9.6	692
3.1 - 5.0	47	4.1	11,190	2.3	1	1	.7	458	.8	18	12	4.4	1,089	3.8	38	28	4.1	8,457	2.2	338
5.1 - 10.0	34	3.0	17,901	3.7	1	-	-	-	-	3	3	1.1	419	1.5	34	31	4.5	17,482	4.6	1,103
10.1 - 25.0	51	4.5	10,628	2.2	1	2	1.4	68	.1	8	24	8.8	1,995	6.9	342	23	3.3	8,061	2.1	1,346
25.1 - 50.0	23	2.0	4,040	.8	1	-	-	-	-	2	12	4.4	459	1.6	157	7	1.0	2,343	.6	934
50.1 and over	34	3.0	4,940	1.0	0	-	-	-	-	1	13	4.8	693	2.4	570	17	2.5	3,353	.9	2,266
Total, all plants	1,145	100.0	482,015	100.0	9	146	100.0	56,984	100.0	28	272	100.0	28,890	100.0	1,155	691	100.0	384,108	100.0	7,810
Less than 90 cents per hour																				
0	640	55.9	264,126	54.7	0	140	95.8	53,719	94.3	0	184	67.6	21,504	74.3	0	308	44.5	184,519	48.1	0
0.1 - 1.0	120	10.5	95,719	19.9	3	3	2.1	2,739	4.8	3	4	1.5	1,118	3.9	5	110	15.9	91,112	23.7	368
1.1 - 3.0	105	9.2	37,561	7.8	3	-	-	-	-	-	12	4.4	1,303	4.5	25	93	13.5	36,258	9.4	670
3.1 - 5.0	61	5.3	20,428	4.2	1	1	.7	458	.8	18	12	4.4	737	2.6	30	45	6.5	24,604	6.4	907
5.1 - 10.0	51	4.5	16,817	3.5	1	-	-	-	-	7	7	2.6	603	2.1	52	42	6.1	16,102	4.2	1,235
10.1 - 25.0	69	6.0	22,690	4.7	3	2	1.4	68	.1	8	28	10.3	2,473	8.6	400	33	4.8	17,734	4.6	3,089
25.1 - 50.0	47	4.1	9,161	1.9	1	-	-	-	-	2	12	4.4	459	1.6	157	26	3.8	6,214	1.6	2,615
50.1 and over	52	4.5	9,515	2.0	0	-	-	-	-	1	13	4.8	693	2.4	570	34	4.9	7,565	2.0	5,337
Total, all plants	1,145	100.0	482,015	100.0	12	146	100.0	56,984	100.0	29	272	100.0	28,890	100.0	1,239	691	100.0	384,108	100.0	14,221
Less than 95 cents per hour																				
0	525	45.9	198,854	41.4	0	137	93.8	50,396	88.5	0	165	60.8	18,151	62.9	0	217	31.3	127,475	33.1	0
0.1 - 1.0	90	7.9	82,611	17.1	3	5	3.4	5,772	10.1	10	8	2.9	2,172	7.5	13	75	10.9	73,115	19.0	843
1.1 - 3.0	52	4.5	30,041	6.2	3	-	-	-	-	9	9	3.3	1,023	3.5	16	43	6.2	29,018	7.6	735
3.1 - 5.0	83	7.2	41,014	8.5	1	1	.7	458	.8	22	8	2.9	896	3.1	35	74	10.7	39,660	10.3	1,665
5.1 - 10.0	108	9.4	36,510	7.6	2	-	-	-	-	10	9	3.7	744	2.6	60	93	13.5	34,904	9.1	2,543
10.1 - 25.0	79	6.9	50,804	10.5	1	1	.7	290	.5	49	11	4.0	2,003	6.9	431	64	9.3	47,887	12.5	7,855
25.1 - 50.0	105	9.2	22,720	4.7	2	1	1.4	68	.1	22	40	14.7	2,860	9.9	1,123	55	8.0	16,848	4.4	8,207
50.1 and over	103	9.0	19,461	4.0	0	-	-	-	-	21	7.7	1,041	3.6	838	70	10.1	15,206	4.0	11,392	42
Total, all plants	1,145	100.0	482,015	100.0	13	146	100.0	56,984	100.0	133	272	100.0	28,890	100.0	2,516	691	100.0	384,108	100.0	31,840

See footnotes at end of table.

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E 7Ae Distribution of Establishments and Workers 1/ in Cotton and Synthetic Textile Mills According to the Number and Percent of Production Workers (Excluding Learners and Handicapped Workers) Earning Less Than Specified Amounts Per Hour, United States and Selected Regions, March 1952

Number of workers earning less than specified amounts	New England				Middle Atlantic				Southeast				Southeast			
	Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts		Total production worker employment (excluding learners and handicapped workers)		Number of workers earning less than specified amounts	
	Establishments	Number	Percent	Number	Percent	Establishments	Number	Percent	Number	Percent	Establishments	Number	Percent	Number	Percent	Establishments	Number	Percent	Number	Percent
0	143	97.9	56,458	99.1	0	244	89.8	26,649	92.2	0	605	87.6	331,956	86.4	0	17	68.0	6,315	75.3	0
94	-	-	-	-	-	2	.7	376	1.3	2	41	5.9	32,579	8.5	91	1	4.0	238	2.8	1
344	3	2.1	586	.9	9	4	1.5	481	1.7	6	35	5.1	15,990	4.2	305	4	16.0	1,177	14.0	86
18	-	-	-	-	-	1	.4	459	1.6	18	-	-	-	-	-	-	-	-	-	-
190	-	-	-	-	-	5	1.8	494	1.7	41	5	.7	1,916	.5	149	-	-	-	-	-
114	-	-	-	-	-	11	4.0	231	.8	33	-	-	-	-	-	3	12.0	660	7.9	81
749	-	-	-	-	-	5	1.8	200	.7	65	5	.7	1,667	.4	684	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1,509	146	100.0	56,984	100.0	9	272	100.0	28,890	100.0	165	691	100.0	384,108	100.0	1,227	25	100.0	8,390	100.0	168
0	141	96.5	54,876	96.3	0	219	80.5	25,179	87.2	0	444	64.3	236,767	61.7	0	13	52.0	5,589	65.8	0
319	2	1.4	1,582	2.8	2	-	-	-	-	-	100	14.5	83,408	21.7	315	2	8.0	206	2.5	2
583	1	.7	458	.8	11	7	2.6	656	2.3	11	59	8.5	32,768	8.5	561	-	-	-	-	-
364	-	-	-	-	-	6	2.2	533	1.8	22	32	4.6	9,047	2.4	342	-	-	-	-	-
713	2	1.4	68	.1	6	3	1.1	297	1.0	28	19	2.7	9,689	2.5	668	1	4.0	140	1.7	11
2,012	-	-	-	-	-	22	8.1	1,505	5.2	260	27	3.9	10,580	2.7	1,681	1	4.0	341	4.1	68
1,589	-	-	-	-	-	12	4.4	459	1.6	142	6	.9	1,876	.5	576	8	32.0	2,174	25.9	811
587	-	-	-	-	-	3	1.1	261	.9	204	4	.6	693	.2	383	-	-	-	-	-
6,107	146	100.0	56,984	100.0	19	272	100.0	28,890	100.0	667	691	100.0	384,108	100.0	4,589	25	100.0	8,390	100.0	892
0	141	96.5	54,876	96.3	0	195	71.7	22,465	77.7	0	421	60.9	232,762	60.5	0	9	36.0	4,489	53.5	0
267	2	1.4	1,582	2.8	2	6	2.2	1,452	5.0	7	83	12.0	74,743	19.5	855	-	-	-	-	-
699	-	-	-	-	-	7	2.6	388	1.3	7	81	11.7	36,913	9.6	692	-	-	-	-	-
448	1	.7	458	.8	18	12	4.4	1,089	3.8	38	28	4.1	8,457	2.2	338	6	24.0	1,846	14.9	58
1,437	-	-	-	-	-	3	1.1	419	1.5	34	31	4.5	17,482	4.6	1,103	-	-	-	-	-
1,803	2	1.4	68	.1	8	24	8.8	1,995	6.9	342	23	3.3	8,061	2.1	1,346	2	8.0	481	5.7	87
1,543	-	-	-	-	-	12	4.4	459	1.6	157	7	1.0	2,343	.6	934	4	16.0	1,276	15.2	472
3,277	-	-	-	-	-	13	4.8	693	2.4	570	17	2.5	3,353	.9	2,266	4	16.0	898	10.7	541
9,574	146	100.0	56,984	100.0	28	272	100.0	28,890	100.0	1,155	691	100.0	384,108	100.0	7,810	25	100.0	8,390	100.0	1,178
0	140	95.8	53,719	94.3	0	184	67.6	21,504	74.3	0	308	44.5	184,519	48.1	0	3	12.0	2,086	24.1	0
379	3	2.1	2,739	4.8	3	4	1.5	1,118	3.9	5	110	15.9	91,112	23.7	368	-	-	-	-	-
695	-	-	-	-	-	12	4.4	1,303	4.5	25	93	13.5	36,258	9.4	670	-	-	-	-	-
979	1	.7	458	.8	18	12	4.4	737	2.6	30	45	6.5	24,604	6.4	907	2	8.0	206	2.5	10
1,897	-	-	-	-	-	7	2.6	603	2.1	52	42	6.1	16,102	4.2	1,235	-	-	-	-	-
3,972	2	1.4	68	.1	8	28	10.3	2,473	8.6	400	33	4.8	17,734	4.6	3,089	6	24.0	2,415	28.8	475
3,750	-	-	-	-	-	12	4.4	459	1.6	157	26	3.8	6,214	1.6	2,615	9	36.0	2,485	29.6	978
6,700	-	-	-	-	-	13	4.8	693	2.4	570	34	4.9	7,565	2.0	5,337	5	20.0	1,855	15.0	793
17,772	146	100.0	56,984	100.0	29	272	100.0	28,890	100.0	1,239	691	100.0	384,108	100.0	14,221	25	100.0	8,390	100.0	2,456
0	137	93.8	50,396	88.5	0	165	60.8	18,151	62.9	0	217	31.3	127,475	33.1	0	3	12.0	2,086	24.1	0
268	5	3.4	5,772	10.1	10	8	2.9	2,172	7.5	13	75	10.9	73,115	19.0	843	-	-	-	-	-
751	-	-	-	-	-	9	3.3	1,023	3.5	16	43	6.2	29,018	7.6	735	-	-	-	-	-
1,722	1	.7	458	.8	22	8	2.9	896	3.1	35	74	10.7	39,660	10.3	1,665	-	-	-	-	-
2,670	-	-	-	-	-	10	3.7	744	2.6	60	93	13.5	34,904	9.1	2,543	-	-	-	-	-
8,432	1	.7	290	.5	49	11	4.0	2,003	6.9	431	64	9.3	47,887	12.5	7,855	2	8.0	206	2.5	26
9,268	2	1.4	68	.1	22	40	14.7	2,860	9.9	1,123	55	8.0	16,848	4.4	8,207	8	32.0	2,914	35.1	1,316
14,496	-	-	-	-	-	21	7.7	1,041	3.6	838	70	10.1	15,206	4.0	11,392	42	48.0	3,214	38.3	2,066
37,407	146	100.0	56,984	100.0	133	272	100.0	28,890	100.0	2,516	691	100.0	384,108	100.0	31,840	85	100.0	8,390	100.0	3,408

U. S. DEPARTMENT OF LABOR
Bureau of Labor Statistics
Washington 25, D. C.

TABLE 8A: Number of Establishments and Workers in Cotton and Synthetic Textile Manufacturing and Number Studied, by Region, March 1952.

Region 1/	Total Industry group 2/		Number Studied	
	Establishments	Workers	Establishments	Workers
United States	1145	520,488	467	289,923
New England	146	61,724	85	50,190
Middle Atlantic	272	32,623	114	19,021
Southeast	691	412,148	247	212,800
Southwest	25	9,523	14	5,131

1/ The regions used in this study include:

New England. . . . . Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont;

Middle Atlantic. . . . . New Jersey, New York, and Pennsylvania;

Southeast. . . . . Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;

Southwest. . . . . Arkansas, Louisiana, Oklahoma, and Texas.

2/ Includes only establishments with 21 or more workers.

(WH53-229)

Mr. Kilcullen: The next witness for the Government will be Mr. Harry M. Douty.

STATEMENT OF HARRY M. DOUTY

By Mr. Kilcullen:

Q. Mr. Douty, will you please state your name and your position. A. My name is Harry M. Douty. I am Chief of the Division of Wages and Industrial Relations of the Bureau of Labor Statistics of the Department of Labor.

Q. Are you familiar with the Government exhibits 18 through 25 which have been introduced into the record here? A. Government Exhibits 18 through 24 were prepared in the Division of Wages and Industrial Relations under my general direction. Government Exhibit No. 25 incorporates material compiled in the Employment
54 Statistics Division of the Bureau of Labor Statistics and that material was not compiled under my particular direction.

Q. Are you familiar generally with the nature of the data and the way the basic data was collected? A. Yes.

Q. So you can answer questions on Exhibit 25? A. I think I probably can in a general way.

Q. Beginning with Government Exhibit 18, 19, and 20, will you describe the content of these exhibits and also the methods which were followed by the Bureau of Labor Statistics in compiling the data and preparing the tables in these exhibits? A. I think perhaps I should say the Bureau of Labor Statistics has been making wage surveys for many years in the various textile industries as well as in other industries in the performance of its functions of providing wage information for a wide variety of public uses. We have made repeated studies in the cotton textile industry and quite a number of studies in what is now the synthetic textile industry. Our two surveys relating to payroll periods in March, 1952 were part of a regular program of surveys. The surveys were announced, I believe,

in the fall of 1951. They were not made specifically for the purposes of this prevailing minimum rate determination. I would like to make that clear because we have made a substantial number of surveys specifically for use under the Public Contracts Act.

The two surveys I am describing were not made specifically for that purpose. They were general purpose studies. Now, I would like to describe very briefly the coverage of these two surveys. The survey of what is called the cotton textile industry and which forms the substance of Exhibits 18 and 20, that survey related to establishments employing 21 or more workers in the following categories: broad woven cotton fabric mills primarily engaged in weaving cotton fabrics over 12 inches in width, cotton yarn mills primarily engaged in spinning, twisting, winding or spooling cotton yarn and cotton thread mills. This generally was the coverage of the cotton textile survey. Now, the coverage of the synthetic textile survey, the results of which are incorporated in Exhibits 19 and 22, included establishments again employing 21 or more workers in the following categories: broad woven fabric mills primarily engaged in weaving fabrics of spun or filaments of silk, rayon, nylon or other synthetic fibers over 12 inches in width. Yarn mills primarily engaged in manufacturing spun yarns from silk, rayon, nylon or other synthetic staple fibers, yarn mills engaged in rewinding, twisting and packaging of filament silk, rayon, nylon or other synthetic fibers, thread mills manufacturing thread, silk, rayon, nylon or other synthetic fibers.

Now, the two textile surveys, the coverage of which I have described, were sample surveys. Not every establishment in these two industries as we define them, not every establishment was covered. We drew a representative sample of mills in the two industries for the purpose of study. The size of the sample in cotton textiles as com-

pared with the universe or complete number of mills or establishments with workers in the industry, the size of a sample in cotton textiles is set forth in table 8, Exhibit No. 18. In cotton textiles we collected information from 285 establishments employing about 236,000 workers. We estimated that the total industry included 715 establishments employing about 419,000 workers. The details of the sample by region are also shown in table 8 for cotton textiles on Exhibit 18. Similar information for the synthetic textile industry is shown on table 8 of Exhibit 19.

Now, the information obtained in the surveys was
56 collected by field representatives of the Bureau of Labor Statistics. These field representatives, working out of our regional offices, primarily out of our Boston and Atlanta offices, these field representatives visited each establishment in the two samples, cotton textiles and synthetic textiles. They obtained their information from responsible company officials and directly from company payroll records. The information was edited, coded, machine tabulated and put together in tabular form. Now, the data relates, as I think I said earlier in both surveys, to payroll periods in March 1952. They do not therefore include any changes in wages that may have occurred after that date. We issued a total of four national releases, and they have been entered into the record as Exhibits 18, 19, 20 and 21. These I might say are in the nature of—I'm sorry; I have my exhibits mixed up. The four releases that we made were 18, 19, 21 and 22. I'll come to Number 20 in a minute. I started to say that these releases were or are in the nature of preliminary releases. We will issue detailed bulletins on each of the two surveys. However, these releases do cover the basic tabulations derived from the surveys. Exhibit No. 18, which is entitled: "The Earnings of Cotton Textile Workers, March 1952" contains three tables. Table 1 shows a distribution worker, the distribution of all production workers in cotton textile mills

by average straight-time hourly earnings, and predominant type of yarn produced or woven as a whole in selected regions. One thing I would like to emphasize about that table is that it relates to all workers that we found in the mills included in the survey. It relates to custodial workers, to handicapped workers, to learners as well as to the most highly skilled employees and the longest service employees in the mills. It is an overall distribution table.

57 Table 2 of Exhibit 18 shows overall average straight-time earnings of production workers in cotton mills classified by type of mill and predominant type of yarn produced or woven. Now, for the purposes of this survey, we classified mills into three types, yarn mills, specialized weaving mills and integrated mills. In terms of yarn produced or woven, we classified mills as to whether they were predominantly engaged in producing or weaving carded yarn or whole yarn or fabric. Now, there is a correction on table 2 that I would like to make. In the very final column on that table under Southwest, the column is headed "Combed yarn or fabric". The word "carded" should be substituted for "combed". There is little or no combed yarn in the production, in the Southwest. Table 3 of the exhibit, Exhibit 18, shows average straight-time earnings of production workers in selected occupations in cotton textile mills. Again there is a breakdown in terms of the type of yarn produced or woven, and there is also a breakdown by broad region. Now, these same three tables appear also in Exhibit No. 19 relating to the synthetic textile industry, and I think it will probably save time if I simply make that reference without describing each of the three tables in detail. Now, these are the tables which were actually issued by the Bureau of Labor Statistics in the releases that have been incorporated into the record as Exhibits 18 and 19. In addition to those three tables, we compiled some additional tables at the request of the Wage and Hour and Public Contracts

Divisions, and these tables are numbered four through eight in both exhibits, 18 and 19. Again, in order to save time, I'll confine my description of these tables to those appearing in Exhibit 18, the cotton textile release. Table 4 in Exhibit 18 is a percentage distribution of establishments and productions workers in the cotton textile industry by minimum entrance rates for the United
58 States and for major regions. I would like to make very clear just what that table is and what it is not. You will notice that at 75 cents the table shows for the United States as a whole that 18.5 percent of the establishments reported minimum entrance rates of that amount of 75 cents, and these establishments employed about 18 percent of the workers in the industry. The table does not mean that 18 percent of the workers in the industry were getting 75 cents an hour, but mills with 18 percent of the workers had entrance rates of 75 cents, and the other entrys on the table should be similarily interpreted. Now, there is another point that I would like to make and that is that the information on the first three tables came from payroll records. The information on minimum entrance rates in table 4 and on minimum job rates in table 5 really reflects statements of company policy, that is, our field representatives asked officials in each establishment what is the minimum rate that you pay to an experienced, newly hired worker excluding custodial workers, and the answer we got is incorporated in this table. Now, similarly, with reference to table 5, our field representatives were instructed to ask what is the lowest rate that you pay to an experienced worker in any job in your mill, and the answer that we got to that question is incorporated in table 5. In some instances the entrance rate and the lowest job rate turned out to be identical and that is reflected in the two tables. Now, table 6, another of the tables that we compiled at the specific request of the Wage and Hour and Public Contracts Divisions, table

6 indicates the percentage distribution of establishments and production workers in the cotton textile industry by the difference between minimum entrance rate and minimum job rate. Now, you will notice that again taking the U. S. as a whole there was no difference in about 57 percent of the establishments employing almost 56 percent of
59 the workers. In other establishments there were differences between these two type of minimum rates ranging from 1 cent to 30 cents or more. There is no marked concentration at any point within that range. Now, this next one is a honey. It is one we never do for ourselves, and I am still referring to Exhibit 18. This is table 7. The table shows the distribution of establishments and workers in the cotton textile industry according to the number and percent of production workers excluding learners and handicapped workers in this table, excluding those, earning less than specified amounts per hour for the U. S. and selected regions. Now, this table really is not terribly difficult, and let's take the first grouping. At the head of the table in the column on the left you have less than 80 cents per hour, and below that there is a zero. Going across to the right we find 624 establishments and that means that 624 establishments had no workers other than learners or handicapped workers, had not workers at less than 80 cents an hour. Now, the next column which is 50.3, is simply the percentage that 624 establishments represented of the total number of establishments. Now, the next column toward the right shows 339,000 plus workers and that means that in the 624 mills there were almost 340,000 workers or almost 88 percent of the total number of workers in mills with no workers other than possibly handicapped workers or learners getting less than 80 cents an hour. Now, I will just go through one more line and then call it quits for the moment. The next line reads, 0.1 to 1.0 percent. Under establishments you have 36 establishments and that means that 36 establishments had

1 percent or less of their employees getting less than 80 cents an hour. The total number of workers in such mills was 25,000 plus or about 6.6 percent of the total number of workers in the industry.

60 Mr. Rankin: May I inquire with one question. Did I correctly understand you to say that 1 percent of the mills, or does that mean in those 36 mills, does it mean that in those mills they were paying 1 percent less than 80 cents?

The Witness: No, sir. It means that those 36 mills had between one-tenth of 1 percent and 1 percent of their employees earning less than 80 cents an hour.

Now, the whole table is of a nature that I have attempted to describe. The same kind of calculation is made for less than 85 cents, less than 87 cents, less than 90 cents and so on. The final table in Exhibits 18, table 8, simply indicates the number of establishments and workers in the industry and the number that we studied. I have already made reference to that table. Now, these same tables are found also in Exhibit No. 19, and they are found also in Exhibit No. 20. I would like to say just a word about Exhibit No. 20. At the request of the Wage and Hour and Public Contracts Divisions we combined the information in the two surveys, in the cotton textile and synthetic textile surveys. So the tables in Exhibit 20 all reflect this combination, and I suppose I might add, by way of an aside, that it was possible and statistically proper to make such a combination because in terms of labor force, processes and so on it's becoming, as all of you know much better than I, increasingly difficult to distinguish between cotton textiles and synthetic textiles. Now, there are two more national releases that I would like to refer to. I am not sure that I have them numbered correctly. Exhibit No. 21 relates to wage practices and related benefits in cotton textiles, and Exhibit No. 22 relates to wage practices and related benefits in synthetic textiles, and in these re-

leases we have attempted to summarize provisions in the industry relating to some of the more important supplemental wage benefits, shift differentials, paid holidays, insurance and pension plans, paid vacations, and we also have tables on minimum entrance and minimum job rates. The coverage of both these releases is virtually identical. Now, Exhibits 23 and 24 again relate to cotton textiles and synthetic textiles respectively. The two exhibits consist of a number of area releases for these two industries. For cotton textiles for example we were able to show overall distributions of workers and distributions of earnings for selected occupations in the following areas, Connecticut and Rhode Island combined, Fall River, New Bedford, Mass., Northern New England, Alabama, East Central Alabama, Georgia, Northwest Georgia, North Carolina, and then within North Carolina two very important areas, Charlotte and Statesville, South Carolina, Greenville; Spartanburg, South Carolina and Texas. For synthetic textiles, Exhibit 24, the areas will differ somewhat for those shown for cotton textiles, Southern New England, Northern New England, Patterson, New Jersey, Allentown, Bethlehem, Pa., Scranton, Pa., Wilkes-Barre, Pa., Charlotte, North Carolina, Winston Salem, High Point, North Carolina, and the State of Virginia. Now, if anyone is interested, I can define these areas more precisely, that is, those that comprise a list in the whole state in terms of the counties that were included. I will just say a word about Exhibits 25. As I said earlier, I am not directly responsible for compiling the Bureau's information on average hours of work and average earnings by industry. I am however generally familiar with that material. This material is reported to the Bureau each month by mail, by representative groups of establishments in a very large number of industries. The items reported for payroll periods ending nearest the 15th of the month are employment man hours and payroll, and from that material

the bureau is able to compute average hours per
62 week, average weekly earnings and average hourly earnings. This material is published each month for a large number of manufacturers and non-manufacturing industries. It is published in a variety of forms including a monthly mimeographed or processed release, and of course it appears in the Bureau's major publication, the Monthly Labor Review. This particular exhibit (indicating), as far as I can determine, contains material that is regularly published by the Bureau. I don't believe there is any unpublished information in here, is there?

Mr. Roberts: I believe there is, Mr. Douty. The table at the end for example.

The Witness: I would like to amend what I just said. I am advised by Mr. Roberts and Mr. Judge that the two final tables in this exhibit do not incorporate information that is regularly published by the Bureau. The first of those tables relates to the hours and earnings of employees engaged in the manufacture of jute goods and cardage and twine except felt, and the second table contains information of the hours and earnings of production workers in dying and finishing except woolen and worsted textiles. We regularly publish information on dying and finishing, but it includes wool. This table takes the wool out. I probably have said enough or maybe too much about this material. If there are any questions, I'll try to answer them.

Q. Just going back, Mr. Douty, to the data on Exhibit 18 which covers earnings among cotton textile workers, you stated that the coverage, that 285 establishments were covered, and table 8 shows 235 workers, 235,852 workers were covered, and the total industry group at 418,770 workers. That total industry group represents what figure? What
is that based on? A. That is based upon the best
63 estimate that we were able to derive of employment in the industry, total employment in the industry at the time of the survey.

Q. In those segments of the industry which you have referred to previously——

Mr. Roberts: Are you referring to the industry groups?

Mr. Kilcullen: The industry groups that Mr. Douty referred to.

The Witness: Yes, sir.

By Mr. Kilcullen:

Q. I understand the Bureau of Labor Statistics has a process called weighting in which they give the data which they obtain sufficient weighting for the entire industry. Can you describe that very briefly? A. I'll see if I can describe it very briefly. I mentioned I think at the beginning that these surveys are sample surveys. We don't attempt nor is it necessary to attempt to cover every establishment in an industry. Now, very roughly and very briefly what we do is to divide the establishments in an industry on the basis of size of establishments. For example, we may find in one industry that there are five establishments with 5,000 or more workers. There may be 20 establishments with employment of between let's say 4,000 and 5,000 and so on. We may want to classify establishments in other ways too, but for the purposes of this explanation, let's confine ourselves to size. So we take the whole industry, in this case the cotton textile industry, and divide the establishments up into size groups. Now, we sample within those size groups. In the very largest sized group we frequently schedule every establishment. So those establishments in the final tabulations would have a weight of one. Now, suppose there are only two size groups. In the second sized group, suppose we schedule half of the establishments. Then we would give each establishment a
64 weight of two. We would have to do that in order to avoid in the final tabulations overweighting by the largest sized establishment group where we took every establishment. So briefly, in answer to your question, we

do weight up the data so that it represents the universe and so that each establishment sized group has its proper weight or proper representation in the total. That is why in Exhibit 18 where the number of establishments is shown, we show the number of establishments in the total industry rather than the number of establishments that we actually covered in the wage survey. Putting it still another way, the sample represents the universe when properly weighted up.

By Mr. Roberts:

Q. Mr. Douty, to what extent would you have representation in these figures on cotton textiles of mills making sheets, pillow cases, towels, and similar textile mill products? A. I am not in a position, Mr. Roberts, to answer that question this afternoon. What you want to know is to what extent various particular products are represented in the survey.

Q. Well, I really didn't direct it with too much precision. I really didn't want a statistical figure, which I knew would be very difficult to obtain, but is there a possibility of there being such mills within the scope of these data? A. Oh, yes. I have no doubt that the survey covered the broad range of cotton textile production within the limits of the definition of the industry that we used, and there certainly would be such mills beyond question.

Q. And if sheeting represented 100 percent that turned out by the mill, that would still be in this group or possibly within the group of broad woven textile fabric mills
65 primarily engeged in weaving cotton fabrics? A. Oh, yes.

Q. Assuming a mill turns all its sheeting into sheets, for the purpose of determining what its primary product was, to know whether or not it would come within the scope of this survey, would you base your conclusion upon the fact that it made sheeting primarily or that it turned its final product into sheets, primarily? A. We base the classifica-

tion of a mill on whether its primary product was weaving sheets or something else.

Q. In other words the final product in that case would not be the determining factor whether or not the mill would be in the survey? In this particular case, as I understood you to say, if the mill that is weaving the sheets—it would be a weaving mill in terms of what is primarily—— A: Let me put it this way, Mr. Roberts. We have included woven cotton fabric mills primarily engaged in weaving cotton fabrics over 12 inches in width; that is part of our definition of the industry. Now, we will include an establishment in the industry if in fact it was primarily engaged in weaving sheeting or other fabrics of more than 12 inches width.

Q. And would one draw the same conclusions in connection with dying and finishing? You would include the employees engaged in that activity in the survey? A. Yes. The survey does not relate to establishments that are primarily dying and finishing plants, but if an integrated mill has a dying and finishing department, those employees would have been scheduled.

Q. And that is true even if the mill dyed and finished every bit of cloth it produced? A. Yes.

66 Q. In connection with the difficult table, as you describe it, number 7 on Exhibit 18, there is a footnote to the effect that—this being footnote one—"these earnings include those of watchmen, janitors and other custodial workers". Would you have any knowledge of the numbers of such workers that would be within this group tabulated? A. We have no information in terms of this particular survey. I think I am right in saying that among the selected occupations that we identified, neither watchmen nor janitors were included.

Q. Janitors I believe on table 3; janitors excluding machinery cleaners, if we are referring to the same thing; it's under table 3, about the sixth one down. A. I'm sorry; you are quite right. We evidently or obviously we did include

male janitors among the selected occupations, and therefore I could get you a figure as to the number of such workers that we found. Now, I don't see on this table that we identified watchmen, and I don't believe we did. I would have to check to see if we identified female janitors of whom I would think there are some.

Q. I take it for granted every mill included in the survey would have workers in the category of watchmen, janitors and other custodial workers? Could you tell me, do you have any specific knowledge with relation to the rates paid these people, the job rates, the minimum rates as contrasted with other workers? A. I'm sorry; I could not comment on that except with respect to the male janitors who are included in table 3 of Exhibit 18. For the United States as a whole table 18 shows that average rates, or average straight-time hourly earnings of $1 for male janitors; that is the lowest rate that we show for any of these occupations.

Q. In the selected occupations, does the Bureau endeavor to select some occupations that are the lowest paid
67 in the industry? A. We attempt to select occupations that reflect the full range of the wage structure. I would not say that we necessarily have a balanced selection in terms, let's say, of unskilled, semi-skilled and skilled. Those terms are hard to define. We do attempt in all our studies to show the full range of the structure, and in this industry I am glad we do have janitors in terms of that statement. On the other hand, we have the highly skilled occupations on which the loom fixer comprises most of them.

Q. I realize you don't have all the occupations, hence this question may not be particularly apt, but on the basis of the tabulations you do have here of occupations and the average hourly earnings, would you conclude from that the janitors for example would be among, if not the lowest, among the very lowest in the establishments? A. I think that is safe to say, that is, if you say among the lowest paid.

Q. May I put it a bit more pointedly. Do you expect to find at the very bottom of the occupations there are perhaps several jobs at the bottom but at the very lowest level of occupational levels—— A. At the lowest echelon.

Q. Perhaps this is beating a dead horse, but on table 5, I suppose that is the table you refer to cotton or synthetic textiles, but I asked you previously if you had included or excluded custodial workers, and your response was that you excluded custodial workers? A. Yes.

Q. And custodial workers according to your definition would embrace all such jobs as janitors, watchmen, yard keepers, that type of occupation? A. I am not certain, to be perfectly honest, whether yard labor would fall there or not. I would have to check on that.

68 Q. Yard labor would be included in table 1, for example, which you described as the percentage of distribution for all production workers. Now, I think you said that meant all plant workers, but would a plant worker be construed under the Bureau's procedure as embracing keeper of the grounds, for example, outside? A. No.

Q. It would have to be right within the plant doing plant jobs? A. Well, let me amend that Mr. Roberts. A keeper of the grounds, I think, would probably fall generally in the custodial group. I would think that we would pick up in the survey any labor that is necessary to the production process of the mill. That would include workers who work in the preliminary operations in a cotton mill.

Q. I'm not quite sure I understand, Mr. Douty. In the case of mills that had roadways to keep up, sweeping and that type of thing, if he is on the payroll, the mill payroll, is it my understanding that the Bureau would consider this as part of the mill operation? A. I think so, yes, Mr. Roberts.

Mr. Blakeney: May we ask one or two questions?

Presiding Officer Grant: Surely.

QUESTIONING OF HARRY M. DOUTY

By Mr. Blakeney:

Q. Mr. Douty, would you look at one or two of these tables for me. First look at this table number 7. Look, please, under Southwest, and on the first line, did I understand you correctly to testify that that 68 percent, that according to this table, 68 percent of the plants in the Southwest are paying a minimum wage of more than 80 cents; is that correct? A. That's right; 68 percent of the establishments have no workers at less than 80 cents an hour excluding learners and handicapped workers.

69 Q. Which would be, put conversely, it would be true from the table, would it not, that 68 percent are paid 80 cents or more; is that correct? A. That is correct, that is, let me put it this way, if I may, that 68 percent of the establishments at the time of the survey employed no workers at no less than 80 cents.

Q. Then it would be true, would it, that 32 percent, that is, subtracting your 68 percent from 100 percent, that 32 percent of the plants in the Southwest were at the time of the survey in March of '52 paying less than 80 cents? A. That is, 32 percent of the plants had some workers other than learners and handicapped workers to whom they paid less than 80 cents, yes.

Q. Yes. And when you say they were paying some workers less than 80 cents, you are thereby saying there was a minimum wage in those plants, not including learners, but a minimum wage to experienced workers of less than 80 cents; that would be true, would it not? A. I'm not making that statement actualy. I would much rather stick to a strict interpretation of this table, but at the time of the survey workers were or were not found at less than 80 cents or some other rate. Now, whether—you see, I'll tell you why——

Q. I don't object to your sticking to the table. A. It is not because I want to be all evasive, but a minimum rate

in a sense is a matter of company policy, and it might be—I don't know—it might be that some of the plants which at the time of the survey had no workers at less than 80 cents. Nonetheless the might conceivably a month or a week later hire someone in at less than 80 cents.

Q. I understand, and I am with you in wanting to stick to the table. I merely wanted to find out what it says. As you described it, it's a honey, and I want to see if I can analyze it. You say—now, looking at the columns under Southwest, the percent of establishments column, that column does show that 32 percent of the plants in the Southwest at the time of your survey had non-learner employees who were getting less than 80 cents. A. That is correct.

Q. And following that column over to Southeast, does the table show this, that likewise at the time of the survey in the southeast, 13.9 percent of the plants in the southeast had non-learner employees to whom they were paying less than 80 cents. I have hastily made these subtractions, and I am not sure they are correct. A. They are certainly approximately correct.

Q. All right, sir, going back to Southwest again in the next descending order, does the table show that at the time of the survey in the Southwest that there were 48 percent of the plants in the Southwest paying employees less than 85 cents? A. Paying some employees less than 85 cents; yes, sir.

Q. Then moving over to the Southeast in that same category, does the table show that at the time of the survey there were 38.4 percent of the plants in the Southeast paying some employees less than 85 cents? A. Yes.

Q. Would you move down to one or two more categories. Does the table show that at the time of this survey in the Southwest, 64 percent of the plants were paying some employees less than 87 cents? A. Yes.

Q. And over to the Southeast column, does the table show that at the time of the survey, 41.4 percent of the

plants in the Southeast were paying some of their employees less than 87 cents? A. Yes.

71 Q. In the Southwest again, does the table show that at the time of the survey, 57.6 percent of the plants in the Southeast were paying some employees less than 90 cents? A. Yes.

Q. Does the table show that at the time of the survey, 88 percent of the plants in the Southwest were paying some of their employees less than 90 cents? A. Yes.

Q. Now, will you turn next to table 5, Mr. Douty. Look first at the column headed, Southeast, Establishments. Then look over to the left at the minimum rate; 90 cents. Following down the establishment column under Southeast until you get to the 90-cent line, is not the total of the establishments, the total of the percentage shown there as to establishments, at that point 33.1 percent? I know you want to take a moment to check that. A. That is correct.

Q. How is it then, Mr. Douty, that that table in that column I have just referred you to shows that 33 percent, 33.1 percent of the plants in the Southeast were at the time of the survey paying 90 cents, whereas this table 7 that we have been talking about shows that 57.6 percent are paid less than 90 cents. Is there an explanation for that? A. I think that it is possible to reconcile these two figures. You may remember that in my—just to be legal—in my direct testimony I pointed out that the tabulations of minimum entrance rates and minimum job rates were based upon statements to our field representatives by responsible company officials as to company policy on such rates, that the earnings tables including table 7, which was derived from the earnings information, the earn-

72 ings tables were based upon the actual company payroll records. Now, it is posible, and this is the first part of my response to your question, it is possible that a smaller proportion of mills reported minimum entrance rates of 90 cents an hour than the proportion of mills in which we found that actually, excluding learners

and handicapped workers, that actually no workers were employed, actually, at less than 90 cents, an hour. I don't know whether I have made that clear or not. You are really dealing with—when you are dealing with entrance rates, you are dealing with something in the nature of a policy. When you are dealing with the earnings, you are dealing with what rates or earnings people actually get at the time of the survey.

Q. Neither of these tables relate to entrance rates. Neither of those include learners; isn't that true? A. I'm very sorry; table 5 is the job rates rather than the entrance rate table.

Q. So neither table includes learners, and neither table relates to entrance rates necessarily? A. No. Table 7, however, does include custodial workers, and table 5 does not. If I may be permitted, could I check that point with one member of my staff? Is that right, Charlie? A. (Mr. Rubenstein) The minimum job rate table excludes custodial workers. The earnings table including the so-called impact table includes custodial workers. That's why there is a footnote on custodial workers.

Q. Let me see if I understand that. Don't both tables include the people who are making the low rates in the plants with the exception of learners? A. (The Witness) No, table 5 excludes the custodial jobs, and table 7 does not. In other words, table 5 excludes custodial workers, and table 7 includes custodial workers.

Q. Now, are custodial workers usually minimum paid workers or not? A. They are certainly at the bottom of the wage structure in most industries.

Q. How is it, Mr. Douty, if table 5 is a table relating to minimum job rates that you have left out custodial workers? A. It was purely a decision on our part. Now, I have here——

Presiding Officer Grant: The reason being that they are not covered by the Public Contracts Act?

The Witness: No, that doesn't have anything to do with it really, because as I said earlier, this survey was not made with reference to this particular use. It was made as a part of our regular program of sureys. I have here a copy of the supplementary field instructions to our field representatives, and we state in this field instruction that data on minimum rates both entrance and job should be reported for workers other than custodial. Now, that was purely a survey decision on our part, and the reason we made it is that in our opinion the minimum rate information would probably be more significant if the watchman, janitor category was excluded, the reason being there frequently are special rates of one kind or another for such workers. You may have watchmen employed because they have had a long service with the company and can no longer do that work. Special considerations often help determine rates at that level, and it is was our opinion a purely arbitrary decision. It was our opinion that the data might be more significant if watchmen and janitors, workers of that type were excluded from the reporting on these minimum rates.

74 Q. Why is it then that you decided, however, to include them in table 7? A. That again bears on the purpose of the survey. Of course, we didn't collect the information in terms of table 7. We collected the information so that we could prepare table 1. It was because we had the information for table 1 that we were able to prepare table 7. Now, table 1 is a distribution of all production workers in the industry by average hourly earnings, and in I think all the surveys in recent years that we have conducted on a nationwide basis, we have developed an overall inclusive distribution of workers by rates as one type of information incorporated in those surveys. That is supplemented by type of information for selected occupations that we show in table 3. So, now, if as the chairman suggested a few moments ago, if we had been doing this survey for this specific purpose, for the purpose of

this hearing, I think in all probability we would have been asked to exclude custodial workers; isn't that right?

Mr. Roberts: Yes.

The Witness: But we weren't.

By Mr. Blakeney:

Q. But you did exclude them, nevertheless. A. Yes.

Q. In other words, you consider it and you concede it was to some extent an arbitrary decision? A. Certainly.

Q. You considered that you would get that minimum wage information better by eliminating custodial workers? A. We felt that the factors influencing the rates of custodial workers were such that to have included such workers in our minimum entrance and minimum job rate information would distort that information at least for general purposes.

Q. To summarize that then, you considered that to include custodial workers would tend to distort the minimum wage picture? A. I would accept that; yes, sir.

Q. Now, who are these custodial workers? Can you tell us who they are, approximately? A. They are janitors, watchmen.

Q. Do you know of other categories? A. Well, I think broadly interpreted those two.

Q. May I ask you, for example, would you consider sweepers or scrubbers in a cotton mill to be custodial within the definition? A. Do I again have your permission to——

Q. Surely. A. I hope, Mr. Rubenstein, you were listening.

A. (Mr. Rubenstein) Yes, I was. I would say that we do not exclude scrubbers or sweepers, because they do work in the mills around the machines, and we would not consider them to be custodial workers. One other thing to add to that which you did not indicate are the grounds keeps, outside help; they would also be included in custodial workers. A. (The Witness) Now, am I clear? Mr. Rubenstein who had direct responsibility for these particu-

lar surveys, Mr. Rubenstein stated that we would not consider sweepers who worked around mill machinery as custodial workers, that in addition to janitors and watchmen whom I have already mentioned we would consider grounds keepers as in the custodial group.

Q. Yardmen, do I understand? A. Yes.

A. (Mr. Rubenstein) No, as far as yardmen. If they would be engaged in unloading freight cars or loading freight cars, they are not custodial workers. I mean,
76 if they would be called yardmen, they would work on the grounds. Then they would be custodial workers. It all depends upon what these yardmen are doing, and if they would be engaged in the yard unloading cotton bales from trucks or railroad cars, they would not be considered custodial workers.

Q. Then do I understand, Mr. Douty, or do you understand from what has been communicated to you that sweepers, scrubbers, employees doing that sort of work are included, were included in your survey and are included in table 5? A. That is correct.

Q. And likewise in table 7? A. That is correct.

Q. And by custodial you can now think of watchmen, yardmen keeping up the grounds, and have you named any others? A. And janitors.

Q. Well, if a janitor would clean up the floor where the machines are, would he then, was he then included in this survey, table 5? A. May I put it this way: we typically understand by the term janitor, an individual who performs general janitorial services, keeps the washroom clean, keeps the floors clean, where you have a type of work as in textile mills where a great deal of sweeping during the production process is necessary. Such workers we have not considered in the janitorial group. Therefore, coming back to your question which was, are sweepers working around the machinery included, in the minimum rate information that we asked for, I think that the answer is that such occupations were so included.

Q. When your men went to a mill, did they proceed to ask the management what jobs are the low paid jobs in your mill, or did they proceed to look at the payroll to ascertain what are the low paid jobs? A. When our field representatives went to a mill, they had with them a schedule that they were required to complete. Now, that schedule called for a substantial amount of information, such information which called for discussions with the appropriate plant official. Other information they would have to go to payroll for. Now, the information they went to the payroll for was this: they had to go to the payroll to obtain information on the selected occupations for which we wanted wage data. Now, these selected occupations are shown in table 3. They would have to go to the payroll; they would have to identify on the payroll workers falling into these jobs for which our field representatives had contact with them, and from the payroll they would take off the rate or the rates being paid to those workers in those selected occupations, and then in addition from the payroll they needed something else. Without identifying the workers by occupation, they needed the rates or the straight-time earnings of all of those workers who did not fall into these selected jobs. For some purposes we called these selected jobs key occupations, and the others non-key. Now, they needed information for the non-key workers not identified by occupation so that we could do table 1. That answers at least part of your question. That is what they go to payroll for, basically, that kind of information.

Q. But I was asking about the minimum paid jobs. Now, if they best wanted to learn what is being paid on the low rates and what are the minimum paid jobs in a plant, the quickest, most direct and most certain way to learn that would be to look at the payroll, wouldn't it? A. Well, that's one way of doing it, but as I have said before, what we were trying to get at was company policy on minimum rates, and on the form that we used, one of the forms that we used, we have appropriate space in which the field

representative is requested to enter this entrance rate
78 and job rate information, and he is instructed to get
that information from the company, not to search
the payroll. Now, maybe that is a defect in our survey procedure, but that is the way we did it in this survey and how we have done it in many others.

Q. Now, let's examine a little whether it is a defect, if we may. If your agent goes to a mill, and one thing he wants to know is what are the minimum wages that are being paid in this mill, I say, isn't the best way for him to ascertain that to look and see as a matter of written record what is the wage being paid? A. We do get that.

Q. That's the minimum rate. A. We get that information or we would have not been able to construct table 7. I mean, we know for any particular establishment that we checklist what is the lowest rate actually being paid; we know that, and that information is incorporated in table 7.

Q. But you did not incorporate that in table 5, did you? A. Table 5 and table 6 are based on replies that we received from company officials on a minimum job and entrance rates excluding custodial workers.

Q. My specific question is: I ask you if the agent, when he went to the mill, looked at the written record to ascertain what is the lowest being paid in this mill, and you said, yes, he did that. But table 5 doesn't have that in it; does it? A. I may ask Mr. Obert to comment on that.

A. May I ask Mr. Ober to comment on that.

A. (Mr. Oberty) Yes, I think that there are a few problems with this whole table, and the reason for that is the original reason we collected that information. The particular purpose or the implications that you place on that table at this meeting, now, the minimum entrance rate table does have significance in some areas where the practices in
bargaining or otherwise rate setting, these minima
79 are kept pretty clear. New England for example, in
many mills that is no problem of getting a minimum

entrance rate and a minimum job rate and knowing what it refers to. That is how originally we developed these tables, because there was definite concepts in New Bedford and other areas as to the minimum entrance, minimum job rate, and normally and traditionally that minimum excluded custodial workers, and we tried as roughly as we could to find, to define custodial workers. They are generally janitors who are occupied with the building primarily, and in textiles they do not include machine cleaners. There are many more machine cleaners on the floor. On the occupational designation of janitors there is a branch that excludes machine cleaners. That is the historical reason for developing that table. Now, in many mills in New England, particularly in those situations where they have bargained with the unions, there is no problem. They've got a minimum entrance rate and a minimum job rate. As you get away from that situation, it becomes very difficult. You say, why didn't we get the actual rate. Well, you really don't get the same thing. Now, a company may carry let's say like minimum entrance rates as a formal thing for years on its policy, but in recent years it couldn't hire anybody for perhaps the past few years at the minimum entrance that presumably is in this rate structure and that the payroll will not reflect over a long period of time any employees that have a minimum entrance rate. Nevertheless from the standpoint of wage structure that minimum has to do with the certificate. You have to get both through payroll. If you want payroll information, some of them do reflect it. Now, here I don't know what purpose, what use is going to be made of that minimum table, but—and I can see it is very important for you to question extensively because of the kind of use that may be made of it; however, as I indicated, that table has had significant, it has been significant where the concepts are fairly clear. As you proceed to areas where there are many non-union situations, where there are a variety of unions that bargain on different bases than

the ones I indicated before, the meaning of the minima gets more and more obscure. The only thing you can say about these tables is that if there is a single rate or two rates that stand out, that people use overwhelmingly in the area, and if you look at these tables in New England you will see it is clear, $1.60½, $1.30, $1.13, $1.14 seems to be used extensively. That is the significance of it. The exact percentage I don't think we could vouch for or feel that that is of great significance a few percentages up or down, but that figure is significant in New England because you will find that of all figures used, most establishments quote that figure, and that's looked at as a standard in the area. As you proceed out of New England, the story becomes more and more muddled and difficult to handle. I think with that little history we perhaps can understand it a little better.

Q. Mr. Douty, have you gained some information there that might be of assistance? I would like to ask you one or two more questions along the lines that we are on. I am not asking you about entrance rates. I am asking you about when your agent goes to a mill and the payroll is there available to him if he wants to know what the experienced employees are getting, the non-learner employees, the employees who have passed the learner stage, and he wants to know what is the minimum being paid to experienced employees, not what they entered at, not what they got when they were learners; but what would be the minimum the experienced workers ar now earning in this class. Now, if he wants to know that he can get it from the payroll, can't he? A. (The Witness) Oh, yes.

Q. What I wanted to understand is, does he go
81 and get that information from the payroll or not? A. He does get such information from the payroll with reference to the selected occupations that we propose to show data for in the survey. He does not get that payroll information for every occupation in the mill.

Q. He does not then necessarily get a payroll, the pay-

roll facts as to the lowest paid experienced employees; does he? He gets it only for selected occupations as I understand. A. Identified by ocupations, yes, only for selected occupations; but as I explained earlier, in addition to getting the rates for the employees in selected, identified occupations, he also without identifying them by occupation gets rates for all the other workers in the establishment. So he does have for any one establishment a complete rate distribution. Now, he can't break that distribution down. That is, he can't classify every worker in the mill into an occupation. He can only do that for selected occupations.

Q. But he does get from the payroll the lowest figure being paid to an experienced employee? A. That is correct.

Q. He takes that? Now, is that in table 5? A. Not necessarily. Let me illustrate why. Taking the United States as a whole, we have 5.6 percent of the establishments that reported that their minimum job rates were 75 cents an hour. Now, it might be that some of those establishments at the time of the survey actually had no workers getting 75 cents an hour, that is, all of their experienced workers above the custodial level may have been earning more than 75 cents an hour, so it isn't—I mean, the point is that you are dealing in table 5 with a company policy, and as you will notice, some establishments said that they had no
82 minimum job rate policy. In table 5 you are dealing with a matter of stated policy, and in table 7 you are dealing with the results of an actual payroll transcription.

Q. But now, if he found for example that the lowest figure he found on the payroll was 80 cents an hour, and he found that John Jones, an employee, was actually working, earning that amount in this class, you say that might or might not have been incorporated into table 5? A. That is correct.

Q. Might or might not? A. Yes, if the official in the company said that our minimum job rate is 75 cents, seventy-

five rather than eighty, would have been incorporated into table 5.

Q. Now, suppose the officials said to your agent, John Jones the man who is getting 80 cents is a janitor who sweeps the floors here, would you have included that 80 cents for John Jones in table 5 or not? A. We would not.

Q. Suppose the management told your agent that John Jones whom you see there getting 80 cents is a scrubber in the plant, would you have included that figure then? A. On the basis of the information from Mr. Rubenstein, yes.

Q. Now, whether in truth that actually occurred, that is, whether the figure for that scrubber was taken, you yourself do not know? A. I do not know.

Q. But it is your understanding that——. A. Could I make one remark bearing upon that point. Our field representatives are, we feel, a competent group of
83 employees in this area. They do work upon the basis of written instructions, and these particular surveys we considered to be so important that we held special training sessions for those of our field representatives who were going to work on these surveys. We held special training sessions both in Atlanta and in Boston, so I just wanted to report I do believe our field representatives were thoroughly briefed on the requirements for this particular survey.

Q. I see, but it would be often a question of judgment or opinion as to what, as to whether a given job should or should not, and the rate for that job, should or should not be included by your agent. It would often be a question of using his judgment and discretion, would it not? A. There is always judgment and discretion. If he had any serious doubt, he should have checked with either our Atlanta or our Boston offices, and in most cases I think he would have.

Q. But he did exclude and fail to use the figures on all whom you called custodial? A. Yes, in table 5.

Q. Even though such persons may have occupied a con-

siderable area of minimum pay on the payroll of that company? A. Regardless of that fact, yes.

Q. Now, may I ask you just one or two other things: how do you decide and select, Mr. Douty, which plants you will go to? You explained that to some extent a moment ago. Will you give us just a little more information on that? A. To give you a very simplified picture, we classify into groups the establishments in the universe. When we sample within groups, we sample on a random basis, that is, if there are twelve establishments in a group and we
84 want six, we take every other establishment.

Q. I notice here on your table 8 that you list the establishments in the cotton textile industry as 715 of which your table shows you studied 285? A. Yes.

Q. There has been introduced in evidence here by the Government this morning as what is known as Davison's Textile Blue Book which lists, as I understand, approximately 4,500 manufacturing establishments in the textile industry. Would you be able to state wherein you chose 715 as the figure for the cotton textile industry, or are there that many other types of textile plants? A. Seven hundred and fifteen was our estimate, and we used Davison's among other sources. Seven hundred and fifteen was our estimate on the number of establishments that fell within the particular definition of the cotton textile industry that we used in the survey. In the synthetic survey we estimated the universe at 430 establishments. Now, 4,500, you see, includes an awful lot that we did not include within our definitions of these two industries, I mean, jute, cords, twines and so on, and wool.

Q. I do understand though that according to your tables you considered that the entire textile industry, that is, cotton plus synthetics were 715 plus 430 for a total of 1,145? A. That was our estimate on the number of establishments in those two industries as we defined them.

Presiding Officer Grant: May I interrupt. Mr. Douty, you mentioned that a particular plant might have been primarily

engaged in the manufacture of a particular textile product. Would the fact that a company is primarily engaged in let us say textile manufacturing have any bearing upon the number of establishments that you have
85 listed in the Exhibits 18 and 19?

The Witness: Oh, yes. We estimate that 715—maybe it isn't 715; maybe it is 720 or maybe it is 705, and this is pretty roughly right. We estimate that 715 establishments at about the time we did our survey were primarily engaged in producing broad woven cotton fabrics, yarn and thread.

Presiding Officer Grant: What do you mean by "primarily engaged"?

The Witness: More than 50 percent of the value of their output in the order preceding the survey. Now, I should point out as I think I did earlier that we excluded establishments employing fewer than 21 workers. I don't know how important that exclusion is in the textile industry. It is not important at all in terms of workers, but it may take some mills. We had this same sized cut-off in the synthetic survey.

By Mr. Blakeney:

Q. So in estimating the number of establishments in that total of 1,145, you were using a definition of the industry as being establishments which primarily manufacture what? A. In the case of cotton, raw woven cotton fabric mills primarily engaged in weaving cotton fabrics over 12 inches in width; cotton yarn mills and cotton thread mills.

Q. And you were not by any means using the definition which the Secretary of Labor has determined for the textile industry under the Walsh-Healey Act, were you? A. No. These two surveys of ours relate to only part of that definition.

Mr. Kilcullen: Mr. Blakeney, before you get off that, your reference to 4,500 manufacturers listed in Davison's Blue Book I presume includes manufacturers of woolen fabrics and yarn and so on?

86 Mr. Blakeney: No. My information is 4,500 in cotton textiles and synthetic textile manufacturers; so I am informed.

Mr. Kilcullen: I don't find any kind of a tabulation, that figure anywhere. Do you know if it appears in the book?

Mr. Blakeney: My informant said he counted them.

Mr. Kilcullen: I would like to point out also that Mr. Douty's testimony was to the effect that they excluded establishments employing less than 21 employees. Now, it may be a great many establishments are employing less than 21 employees.

Mr. Blakeney: I understand that.

The Witness: And there are just lots and lots of establishments in lace, jute and cordage and so on.

By Mr. Blakeney:

Q. You referred to—this is an incidental question, and I want to ask you as a matter of information—Statevillé and Charlotte, North Carolina as being important areas. I happen to be from Charlotte. What is it important for? A. It is a very important center of cotton textile manufacturing.

Q. How about Statesville? A. Statesville is also important.

Q. In other words, for the purposes of your surveys, you regard those two areas as justifying categories of their own, as I understand it? A. There was a special reason—yes, oh, yes; they are very important areas. Charlotte, at the time of the survey, had better than 50,000 workers in cotton, and Statesville had better than 16,000. I think I might at this point mention the fact that for a number of years the Bureau has made studies in these industries annually, not on an industry-wide basis as in 1952, but on a selected locality basis, and two of the areas that we

87 have been covefing in these abbreviated series have been Charlotte and Statesville. Now, in order to maintain some continnity in our survey series, we broke

out Charlotte and Statesville and a number of other areas from this nationwide survey. The Charlotte area includes seven counties.

Q. Statesville, for example, you say was one of your selected localities? A. Yes.

Q. What did that locality include, sir? A. The Statesville area includes seven counties.

Q. Does your exhibit show the counties? A. Yes. The seven counties included in the Statesville area are Alexander, Burke, Caldwell, Catawba, Davidson, Iredell and Rowan.

Q. That is seven counties around Statesville? A. That's right.

Q. That was an area or locality which you considered represented a grouping of textile industry? A. Yes.

(Discussion off the record)

(Short Recess)

By Mr. Kilcullen:

Q. In testifying with regard to the selection of these areas, you stated I think that this was somewhat of a service provided industry for the use of industry, and these areas represented a concentration of textile plants; is that right, Mr. Douty? A. Well, let me elaborate a little. What I said was, we were not in a position to undertake a broad nationwide survey very often.

Q. Because of budget limitations, I suppose? A. Such surveys are quite expensive, so in a number of industries, something like 20, 25 different industries, including
88 textiles, we have for a number of years been making surveys in particular localities. Now, in cotton textiles, for example, I think for the past five years we have covered the Charlotte area, the Statesville area, an area in Georgia, another area in Alabama, and a number of areas in New England, and the areas have been selected because they contain genuine concentrations of establishments in

the industry and partly because they reflected pretty well the wage situation in the region. For example, in the 1952 survey, taking the Southeast as a whole, you get an average for all establishments of about $1.17. In the Charlotte area that average was $1.19—I'm sorry; I'm looking at the wrong one. In the Charlotte area—this is cotton—the average was $1.16 as compared with $1.17 in the Southeast as a whole, and Statesville, the average was a little lower; it was $1.11 as compared with the area of the Southeast region.

Q. Mr. Douty, I would just like to bring out at this time that your selection of these areas was primarily based upon a concentration of plants and has no significance in terms of the marketing of textiles or the competitive areas or any other significance of that sort; is that correct? A. Oh, no. We were entirely interested in the wage factor rather than the other elements you mentioned. You mentioned competitive relations——

Q. Marketing and so on. A. Just one more figure in the Greensville-Spartanburg, South Carolina area, we have an average of $1.20 as compared with $1.17 for the industry in the region as a whole. My only point was that these areas were selected because they appeared to reflect pretty well wages in the broader region, and my recollection is that they were selected after consultation with people in the industry and the unions.

89 Q. If you had the time and money you could probably select a lot more areas; is that correct? You could make a broader study? A. If I had the budget I would like to have, I would do an industrywide survey every year in an industry that is as important as the textile industry.

Q. My point is that you are limited to the selection of just what appeared to be some of the most significant areas in terms of concentration of industry? A. That's right.

Q. So the things that determine your selection of those areas are those considerations? A. That's right.

Q. And you considered that to be a representative sam-

pling of the industry, or rather that the mills located here represent a sampling of the industry as a whole? A. I would answer, yes, except that I would not use the term "sampling" which has a particular, technical—I didn't mean it in a technical sense, a connotation. I would say that the areas we selected in the Southeast and in New England were reasonably representative in terms of wages and wage practices—

Q. That's my point. A. Of wages in the industry as a whole, in those regions.

Mr. Kilcullen: That is all I have.

Presiding Officer Grant: Mr. Harlan, you had some questions?

By Mr. Harlan:

Q. Mr. Douty, I understood you to say that this survey was made on a sampling basis, and you used what you considered to be representative mills in the sampling process; is that correct? A. I put it a little differently.
90 We selected a representative sample of the total universe.

Q. Then you do not represent that the mills actually studied were representative mills? A. Oh, yes.

Q. You think they were? A. I do.

Q. How did you decide what would be representative mills? I don't think I understand how you determined which ones were representative. A. Well, as I explained rather briefly earlier, our general procedure is to first of all assemble a universe, that is, a listing of all the establishments in an industry. We then typically divide those establishments into size groups. We take our samples from those size groups. We pick samples that are sufficiently large to give us accurate results in terms of the general theory of sampling and in terms of the testing that we have done through the years on wage surveys.

Q. How did you pick the samples after you had gotten the mills stratified? How did you pick your mills from

each strata? A. What we do is to sample at random within the strata as to the size of the sample within each strata, which I think your question was really directed to. We typically sampled more heavily in the large sized strata than we do in the smaller sized strata, and the reason for that is that it enables us to cover a much larger proportion of the employment in the industry than would otherwise be possible. In the smaller sized strata, however, we select a sample that is sufficiently large to provide us with reliable results and we weight up the smaller sized strata so that they will have their proper representation in the final or overall results. Now, I am sorry I do not have it with me, our sampling procedures, which are all written down. They could be put into this record. I have here
91 behind me, Mr. Cohen, who is the statistical consultant to our division, and it might be that he would want to—if that is permissible, Mr. Examiner—add to what I have said. A. (Mr. Cohen) As Mr. Douty indicated, the sampling technique is designed to yield us a maximum possible accuracy with the least expenditure of funds, or conversely, to yield the maximum accuracy with the smallest possible error with a given expenditure. It is for that reason we have these samplings ratios from one stratum to another. The method of estimation of the sample is such that the results are unbiased. The fact that we cover a large proportion of large firms instead of small firms does not bias the result because of the weighting procedure that Mr. Douty indicated. I should also like to point out that in addition to the stratification by size, we also perform a stratification by a, on a geographic basis and by type of mill, that is, we selected the samples independently from the mills, and each one of those groups is assigned proper weight, that is, a yarn mill is assigned a weight. It will not only represent itself, but it will also represent a number of other yarn mills within the geographic limits that are comprised in the stratum from which this segment is drawn. A yarn mill, say, in North Carolina, represents only yarn

mills in North Carolina. We do not assign a weight to carry a load for yarn mills in New England, the weight in New England. The selection within the particular strata where we sample is done at random. In other words, there is no judgment made by the person selecting the sample if whether he regards Mill A as being more representative than Mill B.

Q. Then if you do it at random you don't know whether you are selecting mills with high minimum wages, low minimum wages or average minimum wages; do you? A. (Mr. Cohen) That's right. We attempt to make the choice
92 of the strata or the ultimate cells from which we select these plants, we attempt to superimpose all of our knowledge about the industry in the construction of the strata themselves rather than the selection of the individual sample firms from the strata, that is, we attempt to make such geographic and industry classifications which will tend to group mills of similar wage structure in the same strata, but once having done that the rest of the selection is done at random, and the sample is made large enough so that we assume that those errors will compensate within reasonable limits, and we will have in the final analysis an unbiased survey, one which is no more likely to be high or low than the true results, and one in which the sampling error is held within reasonable bounds.

Q. Now, when you make a decision, do you study particularly the Charlotte area or the Statesville area? You do not do that at random, do you? A. (Mr. Cohen) No. The universe is set up separately for every geographical unit for which we are going to present separate data, that is, for instance we have a separate tabulation for the State of North Carolina. The State of North Carolina would then be divided into a number of parts. We would have one grouping for the Charlotte area, another for the Statesville area, and the rest of the mills are assigned to the residual part of the state. A separate sample was selected from each of those three geographical segments. A pro-

portionately larger sample was selected from the Charlotte and Statesville areas than from the other because we were going to publish those separately; however, the establishments selected witthin the Statesville and Charlotte areas represent those areas only. The sample for the rest of the State, the data for the rest of the State is derived from establishments which are selected outside of those
93 two areas and given their appropriate weight.

Q. Do I understand then that you took the largest percentage sampling in the Charlotte and Statesville area than you took in the Southeast as a whole? A. Yes.

Q. And the same would be true for Greenville and Spartanburg? A. Yes.

Q. Incidentally, speaking of these regions which are shown on table 8 of Exhibit 18, where did they come from? Does the Bureau of Labor Statistics determine those regional groupings? A. These are regional groupings which we have been using since 1945. There is a slight modification in them from the standard groupings which we used in other surveys, namely; that Virginia, the surveys in what we call the border States has been incorporated in the Southeast in order to retain continuity with the 1946 survey of cotton textiles and other textile industries which were placed together with the rest of the Southeast.

Q. These groupings are the groups of the Bureau of Labor Statistics? A. (The Witness) Yes, the Bureau of Labor Statistics.

Q. I notice on these samplings although you show here that sixty-six—approximately 9⅔ percent of all of the establishments in the cotton textile industry are in New England. Among those which you have surveyed as a total for the United States, you have surveyed 18 percent in New England. In other words, you surveyed approximately twice as many New England establishments as would seem to be warranted by the percentage of New England establishments to the United States as a whole. A. (Mr. Cohen) Generally speaking the size of the sample that you

need to obtain a given level of accuracy does not de-
94 pend upon what proportion of sample forms of the total population but rather upon the absolute size of the sample itself. For instance, if you wanted to make some inference about a sample of human population and you had a city of two million and a similar city of one million, you could do it with the same cited example. It is the absolute size of the sample which within certain limits is the important criteria rather than what proportion the sample forms of the total universe, and there may be isolated cases in which it is necessary in order to get proper representation to take all establishments. For instance, if your universe consists of only seven cotton mills, we take all of them. In a universe that small it would be necessary to take 100 percent. So that the larger the universe in general, the smaller the percentage sample that has to be taken. In a combination of the data for the United States as a whole, the New England material enters into the final estimates in its appropriate proportion, that is, all the items, the totals that were published in the tables, are not the sample figures; they are estimates of the total industry. So that in the final results, New England represented its true weight, the Middle Atlantic its true weight, the Southeast its true weight, to the best we were able to determine within the knowledge and resources at our disposal.

Q. In any event, according to my figures, you surveyed approximately 77 percent of the New England establishments in Exhibit 18, and you surveyed approximately 51 percent of the Southeastern establishments in the same exhibit, and there are comparable figures, I believe, in Exhibit 19. A. (Mr. Cohen) Actually we studied less than 51 percent.

Q. Yes, less than 51 percent. A. We had slightly
95 over 51 percent of the employment in the establishments.

Q. It's about a third of the Southeastern establishments. A. (Mr. Ober) We consider the regional figures only. We

have samples from each region. That results from the fact that we provide area tabulations which generally require higher samplings, so that the total number visited is completely coincidental. It has no relation to the accuracy of the information. The more areas we show separately in any region, the more visits we will make. It doesn't add to the accuracy necessarily to have more, to make more visits.

Q. In any event, you have made a random selection of only a little over a third of the Southeastern mills and make a random selection of 77 percent in New England. A. (Mr. Cohen) The selection is far from random in the ordinary sense of the word——

Q. That is your word. A. (Mr. Cohen) The selection is random only in the small strata. It is not what you would call an unrestricted, random sampling. Every establishment had an equal chance of selection. As a matter of fact I would say that practically all the large firms had a chance certainly of being selected in this sampling, that is, we didn't leave the selection of such firms to chance; we automatically included them in the sample; so that the process of random selection starts after we have first fortified our sample with a considerable group which in a good many places consists of all of the larger establishments. We didn't leave that to random selection at all. Those were automatically included.

Mr. Harlan: That's all the questions I have.

Mr. Blakeney: I have one or two more. I direct my questions to Mr. Douty, or, if he prefers, to one of the other gentlemen.

By Mr. Blakeney:

Q. The point has just been discussed about the selection of mills and how they are selected, whether at random or not, strata or not, but do I understand this to be true, that in your survey there are a considerable number of types of mills which didn't have a chance to be selected, but were

excluded because they were beyond your definition of the industry that you were going to survey, that is to say, your definition of the industry that you were going to survey was just broad woven cotton fabric and cotton yarn and cotton thread mills? A. That is correct.

Q. So that there was complete and deliberate exclusion of all other types of textile manufacturers? A. That's right.

Q. Other types of textile manufactures would include, would it not, for example, such manufacturing—I take this from the Secretary of Labor's definition under Walsh-Healey—bandages and gauze, bags, braid, lace, cordage, twine and the like. There are a large number of manufacturing establishments in the textile industry which make such things as that; aren't there? A. Oh, yes.

Q. In fact, according to the Davison Blue Book that we have referred to, there are some hundreds and perhaps even thousands to be accounted for beyond your 1,145 which comes within your definition. A. Yes. As I said earlier, these two surveys relate to only a part of the industry as applied by the Public Contracts Divisions. Now, I should perhaps go on and say that these two segments that we have covered in our survey represent a very significant part of the industry. I have something on that
97 which perhaps I should mention since the question has been raised. The only way we could get at the problem of how much our surveys represented of the total industry as defined by the Wage and Hour and Public Contracts Divisions, was to go to the 1947 Census and according to the 1947 Census employment in the industries included within the Public Contracts definition, employment was about 753,000, and the number of establishments, about 5,600. The industry as defined for the purpose of our two surveys accounted in 1947 for about 73 percent of the total employment, that is, 73 percent of the 753,000 workers, and about 32 percent of the 5,600 establishments.

Q. And I think the mills you did study account for about

60 percent of the total employment as you estimated in the industry? A. You mean the mills that we actually studied?

Q. Yes. A. Is that about right, Sam?

A. (Mr. Cohen) Yes, that's about right.

Q. Now, returning to the proposition that I was on; if as we have seen you find that the industry which you would study is 1,145 mills approximately, plants approximately, and as you testified there are plants manufacturing quite a number of other textile products not among the 1,145, which plants may be of large number, hundreds or possibly thousands, might it not be possible, might it not well be for the purposes of minimum wages and for determining what are prevailing minimum wages and what is prevailingly being paid as minimum wages, that these other plants like bags and twine, net and lace and so forth that I enumerated, that the figures on them might have a highly important bearing on minimum wages? A. (The Witness) My only comment would be that the Bureau of Labor Statistics claims only that the data for the two industries we surveyed are representative of those two textile industries. We do not claim that they are necessarily representative of the additional industries that we mentioned.

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Q. Mr. Donty, from your experience in this field in your studies, would it not be your understanding or even your information that these plants of the type I mentioned, bags and bandages and twine and so forth, probably or in general are lower paid, might therefore have a greater impact on the minimum subject than the mills in the group which you did define for your study? A. We simply have not made recent surveys in recent years in the industries you mentioned. I don't know.

Q. Whether they would be lower wage, tend to be lower wage in the industries you did define and did study, you don't know? A. That is true.

Q. You mentioned in your testimony, direct testimony as I recall, that when you came to make this particular survey

in March of this year, that it was an important survey; do you recall whether you so referred to it? A. I'm not sure that I did, but I would certainly agree——

Q. You would agree that it is of importance? A. Yes.

Q. Was it different in any way from surveys that you had previously made? A. The last time that we made a comparable survey in the cotton and synthetic textile industries, that is, a survey as comprehensive as this, was in 1946. Between 1946 and 1952 we undertook the more limited type of survey that I have previously described, a survey confined to particular areas, in New England and the South.

I think any survey of one of the basic industries in
99 the country, as textiles certainly is, is an important survey from our point of view.

Q. Did I understand you to say that at the time you made the survey you did have in contemplation obtaining minimum wage data and did have in contemplation the compiling of such data for purposes of this hearing, or did not; which was it? A. We did not. Let me put it very specifically. In compiling this survey, no special needs were taken into account. We have done surveys, quite a few of them, specifically for this purpose, but these two textile surveys were part of our regular program. They were general purpose surveys. They do develop I think a lot of information that obviously bears upon a determination of this kind, but the surveys were not made for this particular purpose.

Q. Do I understand then that at the time you made the surveys you knew of this proceeding, of this contemplated hearing, but any data bearing upon this hearing was incidental to what you were compiling, that is, you went right forward with your survey in exactly the same manner which you would have if this survey, if this hearing and this proceeding had not been contemplated? A. That is correct. As I think I mentioned before, the survey was part of our program. Well, roughly a year ago—we have to plan a year ahead—I think we made some public an-

nouncement of these two surveys last fall, the fall of 1951. I don't remember offhand when we first heard that there might be a re-determination on the prevailing minimum rate in the textile industries, but our surveys were not altered in any way by the decision to see whether a re-determination should be made.

Q. And you were not requested from any source, and did not in your survey undertake to obtain any data bearing upon this redetermination? A. That's right. We were not requested by any—I don't know what the expression is——

Q. Agency, authority? A. Authority to make any special collection for this purpose.

A. (Mr. Rubenstein) I would like to add a point there. In our 1950 survey of textiles, which was on an area basis, in our release we did have some tables on minimum entrance, the minimum job rates made up the same way as we have it for March, '52 survey. Now, I personally attended the panel meeting, the textile panel meeting. I sat there as an observer. The people there knew that we were going into this field of wage surveys, of cotton and synthetic textiles. I finally was asked to explain to the people present what we intended to collect at the survey, the type of survey and the type of information, I mean, as far as the Bureau's survey—I think you raised the point, Mr. Love, if I recall properly—I got up and I explained the overall aspect of our survey and what information we were going to collect. So far as the minimum entrance, the minimum job rates, it is nothing new so far as our surveys. The '50 survey was the area-type survey, and on our release we did have the tabulation of the minimum entrance, the minimum rates, the way we put them out in our March, 1952 study.

Q. Do I understand this to be true, that after you—while you were making your survey, or was it after you finished your survey, you were requested by the Department of Labor or by some other source to make special compilations

for purposes of this proceeding? A. (The Witness) Yes. After this survey was completed, and to the best of my recollection after we had issued the preliminary releases with the three tables attached that have been introduced into the record this afternoon; to the best of my recollection it was not until about that point that we were
101 requested to prepare the special tabulations that are found in tables 4 and 5, 6 and 7.

118 STATEMENT OF MR. LINSLEY V. DODGE

The Witness: My name is Linsley V. Dodge. I am vice-president in charge of sales of Berkshire Fine Spinning Associates, Inc., with which organization I have been associated since its inception in March 1929. From 1924 to that date I had been connected with Greylock Mills of North Adams, Massachusetts, which company was absorbed into the present Berkshire organization. For three months in 1951 I served without compensation in the Office of Price Stabiliation as a textile consultant in the Cotton Textile Division of the Consumer Soft Goods Branch, in charge of fine cotton goods.

Berkshire Fine Spinning Associates, Inc. manufactures fine combed cotton textiles in 10 mills located in the States of Massachusetts, Rhode Island, and Vermont, equipped with approximately 780,000 spindles and 15,000 looms, employing more than 8,000 people. Its sales for the year ending September 30, 1951 amounted to over $60,000,000, of which in excess of 30 per cent were made in the greige or unfinished state and the balance as dyed or printed piece goods. Its general sales offices are maintained at 40 Worth Street, New York City, with representatives located in nine other major cities.

In January of this year Berkshire's competitors numbered 62 mills situated in 11 States from Maine to
119 Texas. In addition to these present competitors, the installation of relatively minor equipment would

enable a great number of cotton mills throughout the country to enter the combed goods field. Beyond this threat of additional competition in Berkshire's own particular field, it should be further realized that combed cotton textiles are in continuous competition with fine carded cottons as well as rayon and other synthetic fabrics made in all parts of the country.

The cotton textile industry is highly competitive and probably more competitive on a price basis than any major industry in the country. Such minute fractions as one-sixteenth of a cent per yard can often determine the consummation of a sale. In the case of Government contracts, an even smaller fraction of a cent may determine the successful bidder.

New York is the trading center for cotton textiles in both greige and finished goods, with the very largest part of these activities concentrated in what is known to the industry as the Worth Street area. In New York are located the selling offices of mills operating from Maine to Texas and here are established the prices for greige or unfinished goods as they come from the looms, the prices which basically determine the consequent selling price of the fabrics into which the greige goods have been converted, and even the price of the end product into which they will have been manufactured, whether the basic cloth was woven in Alabama or Vermont. Here also are located the sales offices of the finishers, bleacheries, print and dye works throughout the country, and of the converters who establish the prices of the fabrics offered to the consumer. In addition, here is published daily in two newspapers a record of prices and quotations for a great number of fabrics of all kinds woven in widely varying parts of the Nation.

120 While many cotton textile organizations are integrated to a greater or lesser degree, Berkshire owns no finishing plants, though it does sell finished goods as well as greige goods. None of the goods woven in its 10 mills is finished in the communities where the mills are lo-

cated by Berkshire or by its greige goods customers. They are shipped to many parts of the country outside the New England area, more than one-third going to States other than those where the mills are situated. In the case of only two of its several hundred greige goods customers, they together in 1951 shipped for finishing below the New England and Middle Atlantic areas over 20,000,000 yards. Berkshire itself finished outside the New England area in the first six months of 1952 more than 10,000,000 yards.

In no clearer way can the relation of the cotton textile industry to the Nation as a whole be indicated than by the last Government contract in which Berkshire participated. Bids having been opened and awards made at the Joint Army and Navy Procurement Office in New York; the cloth was woven in North Adams, Massachusetts; bleached and finished in Lincoln, Rhode Island; manufactured into handkerchiefs in Greenville, Texas; and delivered to the Naval Supply Depot at Clearfield, Utah.

Mr. Sullivan: May I ask a few questions of Mr. Dodge?

Presiding Officer Grant: Yes.

By Mr. Sullivan:

Q. Mr. Dodge, Berkshire has sales offices in nine locations throughout the United States? A. That's right.

Q. Does Berkshire complete all its sales exclusively in New York? A. Exclusively in New York.

121 Q. Would you describe for the record the types of organizations which sell greige goods in New York? A. There are two basic types of organizations; commission houses, which are an independent organization which may sell the product of one or more mills, or individual selling companies, which may be wholly owned subsidiaries or may be a direct part of the mill or group of mills.

Q. So that a mill either sells direct through its own name or through a selling corporation, usually wholly owned by

it, or may sell through commission houses? A. That's correct.

Q. Would you say that all mills which sell in the greige are represented in New York in this Worth Street area? A. I would think 90 per cent.

Q. Of all the greige goods sold in the country, what per cent would you say is sold through New York selling organizations? A. Again I would use the figure of 90 per cent.

Q. On the basis of your experience in New York, would you say that the prices of the various constructions of greige goods are established as a result of trading in the New York area? A. No question about it.

Q. Now, as to finished goods as contrasted with greige goods: How would you say that the prices of finished goods are established? A. Well, the price of finished goods would be established by the component total of the items making up their cost, plus the competitive price which is freely available to anyone who wishes to obtain it.

Q. Now, as to this first component: the most important component of that is the selling price of greige goods?

122 A. The market price of greige goods.

Q. The market price of greige goods, plus the additional cost of finishing or printing? A. Yes.

Q. And then you said the competitive price of finished goods. How do you know what the competitive price of finished goods will be? A. No one who has sold finished goods in New York for any length of time has failed to have his customer or potential customer tell him quite rapidly the price at which he is able to obtain those goods goods from his competitors. It's been going on a long time.

Q. As a seller in New York, you are in constant touch with the prices which your competitors are quoting? A. We must be.

Q. Have you an estimate as to what per cent of the finished-goods are sold through the New York market, or

through trading in the New York market? A. I would think that the 90 per cent figure that I have used would hold true in this case.

Q. Are greige goods sold and the price quoted f.o.b. mill? A. Right.

Q. Are finished goods sold and the price quoted f.o.b. finishing plant? A. Correct.

Q. Is that the universal practice in the industry? A. As far as I know.

Q. Now, Berkshire's greige goods, are they shipped to converters throughout the United States? A. Throughout the United States, for finishing; the converters not necessarily being located throughout the United States.

123 Q. I see. Are your finished goods shipped to customers throughout the United States? A. They are.

Mr. Sullivan: That's all I have.

Mr. Rankin: Could I ask a few questions, sir?

Presiding Officer Grant: Surely.

QUESTIONING OF MR. LINSLEY V. DODGE

By Mr. Rankin:

Q. Mr. Dodge, your testimony, I take it, has to do with fabrics and not yarns? A. That's correct, sir.

Q. There is a great difference in the way in which yarns are sold and the way in which geige goods are sold; that's true, isn't it? A. I understand so.

Q. And there are literally several hundred sales yarn mills, many of whom sell from their mill as the sales headquarters, selling either through their own employees or selling through brokers located at different places; that's true, isn't it? A. I so understand.

Q. Now, then, where are your nine sales offices located? A. Atlanta, Dallas, Philadelphia, Boston, St. Louis, Los Angeles, San Francisco, Chicago, and Kansas City.

Q. Now, then, are the contracts signed in the New York office or at your mill headquarters? A. In the New York office.

Q. And do you have salesmen calling upon customers in the different parts of the country? A. We do.

Q. And while the sales contract may be signed by
124 your company in New York, the transaction practically is consummated at many places in the country where you have a meeting of the minds, where you have, we will say, a verbal offer and a verbal acceptance? A. The verbal acceptance would not be made by our representative in the field. It would be made by us in New York.

Q. I appreciate that. I mean to say, technically and legally, the contract becomes a contract in New York, but I mean to say that negotiations have been conducted in 20 or 30 or 40 different States, and what you do in New York is to say Yes or say No. That's true, isn't it? A. That's correct.

Q. In other words, you may have authorized your salesmen to offer goods at a certain price per yard, which the customer says he will pay. That's true, isn't it? Or you may have it the other way around; that the buyer makes you an offer and you accept his offer? A. With us, it's the other way around.

Q. You mean that you make the tender? A. No; the tender is made by the buyer.

Q. By the buyer. What goods do you make that you sell to the Government which are covered by Walsh-Healey? A. We have made a great many goods over the years, Mr. Rankin.

Q. I mean of a general kind; what is their type? A. Fine combed cottons.

Q. Yes. And are you the principal contractor, or are you the substitute contractor? A. We are the principal contractor.

Q. Principal contractor. In other words, you sell to the Government directly? A. That's right—not in all cases.

125 Q. Sir? A. Not in all cases.

Q. Now, then, you say that prices are quoted daily in two newspapers. Which papers do you refer to? A. The Daily News Record and the Journal of Commerce.

Q. And both of those papers have wide distribution throughout a large part of this country, don't they? A. That's correct.

Q. Now, then, many of the companies other than yours who have offices in New York City, just as you do have branch offices scattered throughout the country, pretty much as you do. That's true, isn't it? A. I so understand.

Q. And some of them have even more than nine branch offices, don't they? A. They do.

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STATEMENT OF W. S. BLAKENEY

377 It being thus established, Mr. Examiner, that the whole extent of the Secretary's duty and power in this proceeding is to ascertain and to state what minimum wages are now prevailing in the localities of the textile industry, the issue upon the Union petitions may now be correctly stated as follows: Is $1.13 or $1.13 and ½ per hour the minimum wage now prevailing in each and all of the localities of the textile industry? The answer is that no one figure, and certainly not $1.13 or $1.13 and ½, prevails as a minimum wage in each and all of the localities of the textile industry.

Statistical data is hardly needed to support this answer. But such data is nevertheless at hand to us here. In March and subsequent months of this year, as has already been shown, the Bureau of Labor Statistics under the Secretary of Labor conducted a statistical
378 survey of the industry. Now, for the purpose of that survey, the Bureau divided the textile industry into four regions as follows: the Southwest, consisting of Arkansas, Louisiana, Oklahoma and Texas; Southeast, consisting of Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia; Middle Atlantic, consisting of New Jersey, New York and Pennsyl-

vania; New England, consisting of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Now, without adopting the BLS data and without in any sense agreeing that its regional divisions are appropriate classifications upon which to base any determinations under the Act, it may nevertheless be noted that such data discloses, for example, the following information relative to the plants studied in the cotton textile industry by the BLS.

In the Southwest as defined above, 60 percent of all the plants pay a minimum wage of less than 86 cents, and practically none, that is, only 4 percent pay a minimum wage above $1. In the Southeast, the majority pay a minimum wage of less than 97 cents. In the Middle Atlantic only 31 percent pay a minimum wage lower than $1. In New England practically no plants, that is, 3 percent pay a minimum wage less than $1, and 70 percent pay a minimum wage of $1.16 or more.

Substantially the same minimum wage disparities hold true under the BLS survey when statistics for the synthetics textile industry are merged with those of the cotton textile industry. Thus, it is seen that the Secretary's own figures utterly refute the proposition that $1.13 or $1.13 and ½, or any other single amount, represents the minimum wage now prevailing in all the localities of the textile industry. Under this BLS survey, would any one argue, for example, that the $1.16 and above which is paid by 70 percent of the mills in New England prevails in the Southwest where 60 percent of the mills pay a minimum wage of less than 86 cents? Would it not be equally absurd to say that the Southwest prevails, the Southwest figures prevail in New England?

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As has been seen, the statute does not permit but instead prohibits any idea which anybody might have to the effect that one area is to be regarded as predominating over the other and that, therefore, its figures should override those of the other. Nor would it be in any way permissible under

the Act to split the difference between the two and declare a compromise figure. That would be to declare as prevailing in both a fictitious figure which actually prevails in neither.

Now, Mr. Examiner, like the Secretary of Labor, the American Cotton Manufacturers Institute has had a survey of the textile industry made in an effort to obtain data which would bear upon this proceeding. The Ralph E. Loper Company of Greenville, South Carolina, conducted this survey. Inquiries as to minimum wages being paid were mailed to all the companies, some 4,500 members in number in the industry, as it has been defined by the Secretary of Labor and as listed in the 1951 edition of Davison's Textile Blue Book, which as you will recall has been offered in evidence here by the Government. Replies were received from companies employing approximately 60 percent of the workers in the industry which appears also to be substantially the coverage of the BLS survey. Now, these replies, like the BLS studies, show in a striking manner the disparity in the minimum wages paid in different localities. For example, according to the figures obtained by Loper, the lowest minimum rate in Maine is $1.16 and ½ while the highest minimum rate in Louisiana is 99 cents. If I may repeat that, the lowest minimum rate in Maine is $1.16 and ½. The highest minimum rate in Louisiana is 99 cents. Likewise in contrast to Maine's lowest minimum rate of $1.16 and ½, Alabama, Georgia, South Carolina and Virginia's highest minimum rate is $1.04. Thus the lowest minimum rate in Maine is 12 and ½ cents above the
380 highest in Alabama, Georgia, South Carolina and Virginia. By comparison with Maine's lowest minimum rate of $1.16 and ½, minimum rates as low as 75 cents are reported from Georgia, South Carolina, North Carolina, Virginia, Missouri and Texas. The highest minimum rate reported from New Jersey is $1.50. By comparison, as noted above, Louisiana's highest minimum rate is 99 cents, or 51 cents lower. Likewise, by comparison with the high-

est minimum rate of $1.50 in New Jersey, Alabama, Georgia, South Carolina and Virginia's highest minimum rate is, as noted above, $1.04. The average minimum rate in North Hampton County, Pennsylvania is $1.29 and ½. The average minimum rate in Cherokee County, South Carolina is 49 and 7/10 cents lower or 79 and 8/19 cents. The average minimum rate in Manitowoc County, Wisconsin is 53 cents lower or 76 and ½ cents. The county having the lowest average minimum rate in Maine is York with an average minimum rate of $1.16 and ½. By contrast the county having the highest average minimum rate in Texas is Harris with an average minimum rate of 98 and 3/10 cents. Thus, Maine's lowest county average is 18 and 2/10 cents above Texas' highest county average. The county having the highest average minimum rate in New Jersey is Cumberland with an average minimum rate of $1.27 and 3/10. By comparison the county having the highest average minimum rate in North Carolina is Guilford with an average minimum rate of 24 and 3/10 cents lower or $1.03.

Mr. Examiner, Bristol County, Massachusetts and Gaston County, North Carolina are both great textile centers, having within their boundaries more spindles than any other counties in the United States. The average minimum wage in Bristol County, Massachusetts is $1.18 and 8/10 cents. The Average minimum wage in Gaston County, North Carolina is 89 and 3/10 cents, from all of which it is abundantly clear that wide disparities exist between the minimum wages prevailing in the different localities of the textile industry. To name the figure stated in either of the union petitions or to name any other single figure as a minimum wage prevailing in the textile industry of the United States would not only be a violation of the Walsh-Healey Act but would be a flagrant disregard of truth and fact. The union petitions, therefore, cannot be granted and must be denied.

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382 Now we would like to call your attention to a final consideration which greatly reduces and indeed as a practical matter largely wipes out the whole problem of determining minimum wages under the Act in this industry, and that is the fact that the Walsh-Healey Act actually has no application whatever to the great bulk of the products that are manufactured in the textile industry. I am aware the point has been and probably will be raised as to the pertinency of this subject to this hearing, and I will when I finish undertake to substantiate and justify our position that the matter is pertinent. Now, it may seem, a
383 rather startling proposition, Mr. Examiner, that to say that the Walsh-Healey Act has no application to the great bulk of the products manufactured in the textile industry, I say that may seem a startling pronouncement in view of the fact that for some sixteen years that the Act has been steadily and universally applied to the entire textile industry; a study of the matter will disclose, however, that this has been done only by virtue of a thoroughly erroneous interpretation of this Act. The Walsh-Healey Act contains the following provisions:

"This Act shall not apply to purchases of such materials, supplies, articles or equipment as may usually be bought in the open market".

From which it would seem to follow as surely as common sense and the English language can make it that textile products, no matter for whom made or to whom sold, if they are such as "may usually be bought in the open market" are not subject to the Act. No one will dispute the fact that the great bulk of the products manufactured in the textile industry are "such materials and articles as may usually be bought in the open market", that is, in the ordinary channels of trade and commerce.

Now, to this the present Secretary's predecessors in office apparently saw no answer except in effect to redraft what Congress had written. Mr. Examiner, I say that there is

this provision in the Act, and it is this shall not apply to purchases "of such materials, supplies, articles or equipment as may usually be bought in the open market". Now, it would appear that, I say, the Secretary, those who sat in the Secretary's chair in past years, saw no answer to the proposition that that would eliminate from the Act virtually all the products of this industry because virtually all of the products of this industry are indisputably bought and sold in the open market. Now, the former Secretary of Labor therefore issued a ruling or interpretation that, quote:

"The open-market purchase exemption in the Public Contracts Act by its terms applies only to such purchases as the Government usually makes in the open market".

It is a matter of complete mystification as to what the reason or the authority is for this pronouncement. Instead of reading as it did when it left the hands of Congress, quote:

"This Act shall not apply to purchases of such materials, supplies and so forth as may usually to bought in the open market", instead of reading thus as Congress wrote it, quote:

"The statute has been administratively re-enacted to read: This Act shall not apply to purchases of such materials and so forth as are usually bought by the Government in the open market".

Now, it is admitted that textile products are not "such materials, supplies and articles" as the Government usually buys in the open market. It is admitted that the Government does not usually buy anything in the open market but mainly through the method of advertising for bids. But the text of exemption under this Act, Mr. Examiner, is not whether the Government generally buys the products in question in the open market but whether the products in question can generally be bought and generally are

bought in the open market. It is respectfully submitted that the administrative interpretation to the contrary is sheer fiat.

Many years ago Congress enacted a statute known as the Federal Eight Hour law, which like the Walsh-Healey Act prescribed certain labor standards for work on Government contracts. That statute contained a provision almost identical to the Walsh-Healey provision now in question by which there were exempted from the operation of that Act, quote: "Such materials or articles as may usually be bought in the open market".

385 Over a period of years extending through several administrations, this provision was interpreted and applied by successive Attorneys General of the United States, by the Judge Advocate General of the Army, by successive Solicitors of the Treasury, the Post Office Department and the Department of Commerce and Labor. Their rulings unanimously and without exception support the contention which we are now making; not one supports or in any way tends to justify the interpretation which later Secretaries of Labor have placed upon the similar provision in the Walsh-Healey Act. For example, the Socilitor of the Department of Commerce and Labor ruled, quote:

"That such materials or articles as may usually be bought in open market embraces all articles and materials, a stock or quantity of which is usually kept on hand for sale to the public by some person making it his business to sell such articles. Articles and materials therefore even although not of standard sizes, quantities, patterns or types, would probably be within the exception and be excluded from the eight-hour provision if the same general kind of article in other sizes, quantities, patterns or types was purchasable in the open market".

Similarly, the Solicitor of the Post Office Department ruled, quote:

"The question then is, is the article one of a character that is kept in stock by merchants or dealers to meet a

general need of the public or is it an article designed exclusively or almost exclusively for governmental purposes. If it is essentially uniform with like articles purchased in the open market by the general public, then it is an article as to the manufacture of which the exception contained in Section 2 of the Eight-Hour Labor law applied".

Specifically, for example, the following were held to be, quote, "such materials or articles as may usually be bought in the open market" and therefore not subject to the Federal Eight-Hour law: thread, twine, canvas, tentage, corduroy, cotton cloth, all from opinions of the Attorney General.

386

The fact that the Government requires the products which its buys to conform to named specifications, of course, does not alter the conclusion. Products which are usually bought and sold in the open market, especially when bought and sold in large quantities, are required likewise by private buyers to fulfill named specifications. Of course, there are textile products, for example, camouflage cloth, probably, which are made to specifications entirely different from those of any textile product "usually bought in the open market". On this point an opinion prepared by Mr. Felix Frankfurter for the Secretary of War is illuminating:

"The test laid down for the statute is not whether in the particular instance the contract is for the purchase of ready-made goods or for goods to be made to special order. The form of the contract does not control, as this phrase in the statute emphasizes. The line of division is whether or not such articles are of the class that may usually be bought on the market although in the specific contract they are ordered to be manufactured to conform to particular specifications".

Similarly, Attorney General McReynolds, agreeing with his predecessor, Attorney General Wickersham, ruled, quote:

"Where an article or a material belongs to a class which may ordinarily be bought in open market, the Act by its

very terms excludes it from the operation of the law, no matter to what extent it may be individualized and distinguished by the requirements of the particular specifications under which the contract is executed."

And this point, Mr. Examiner, is further put completely at rest by the fact, when the Walsh-Healey Act was under consideration in Congress, the House Committee reported out a provision by which products that
"may usually be bought in the open market", would
387 nevertheless be subject to the Act if "specially manufactured to conform to particular specifications". Now, after thorough debate on that proposal, it was stricken out. Thus Congress specifically decided that products which "may usually be bought in the open market" should not be subject to the Act even though "specially manufactured to conform to particular specifications".

Now, upon all of the foregoing, all that I have tried to outline, Mr. Examiner, it is submitted that the petitions of the CIO and AFL Unions must be denied and that this proceeding should thereupon be terminated, but if the Secretary sees fit instead to go forward with such minimum wage determinations as will conform with the statute, then it is urged that he do so only after adequate opportunity for study of the complex problems involved and in the further realization and recognition of the fact that the Walsh-Healey Act does not in any event have any application to the great bulk of the products which are manufactured in the textile industry.

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514 Mr. Sullivan: Well, I noted on the form here, Exhibit 4, that when you asked for minimum wage data you tell the manufacturer who receives the questionnaire to
omit learners, office employees, handicapped work-
515 ers, supervisors, executive and administrative personnel, but nothing is said about custodial workers. I wondered if that omission was intentional or an oversight.

Mr. Blakeney: My understanding is that it is not an oversight, that the ACMI was doing the best it could to include everybody who was included in the Secretary's definition and that it does not concede or agree that any particular jobs that might be called custodial are as a matter of law to be omitted in making a survey of this sort.

Mr. Sullivan: Then the inclusion of certain jobs that might be called custodial in the list of jobs on Exhibit 2A was intentional?

Mr. Blakeney: My understanding is that the description under heading three, the description within the parenthesis, this is, omitting learners, office employees, handicapped workers, supervisors, executives, administrative personnel, that that was deliberate and it was deliberate in that no others were included within those parenthesis.

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530 Mr. Kilcullen: Mr. Blakeney, I have a letter here which I would like to hand to Mr. Love and ask him if he recognizes this as being a copy of a letter that was addressed to him.

(Document handed to Mr. Love)

Mr. Blakeney: Mr. Love says he does recognize it as a copy of a letter he got on or about the date that it bears.

Mr. Kilcullen: Mr. Examiner, I would like to read this letter into the record.

Mr. Blakeney: You may put it in the record, if you wish.

Mr. Kilcullen: I would like to read it because I would like to ask a couple of questions pertaining to it.

Mr. Blakeney: All right.

Mr. Kilcullen: This is a letter addressed to Mr. F. S. Love, Secretary and Treasurer of the American Cotton Manufacturers Institute, Charlotte, North Carolina, from the Ralph E. Loper Company, 500 Woodside Building, Greenville, South Carolina, dated June 2, 1952:

"Dear Sadler:

"Re minimum wage survey.

"We are getting closer to the time of finishing up
531 our survey report. We are summarizing the figures as follows:

"1. Number of mills at each minimum rate reported for the following areas:

"(a) New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut);

"(b) Middle Atlantic (New York, New Jersey, Pennsylvania);

"(c) Southern (Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas);

"(d) North Central (Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Ohio, Indiana, Illinois, Michigan, Wisconsin);

"(e) Western (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California).

"2. Number of workers at each minimum by areas.

"3. Total number of workers employed in plants reporting by areas.

"4. Number of plants reporting cost of living wage adjustment agreements by areas and number of workers covered.

"5. Types of occupations paid at minimum rates.

"6. Types of goods manufactured in plants reporting.

"7. Average employees per plant at each minimum rate reporting.

"If you have any suggestions in summarizing the data, I would be glad to hear from you as soon as possible.

"With kind personal regards,

"Sincerely yours,

"WALTER SIMISTER, JR., *President.*"

532 I would like to ask Mr. Love if the American Cotton Manufacturers Institute received from the Loper Company the summaries and the data that Mr. Sinister described in this letter?

Mr. Blakeney: You say you want to ask Mr. Love that?

Mr. Kilcullen: Yes, sir. I present that question to Mr. Love, through you, if you prefer to have it that way.

Mr. Blakeney: Mr. Solicitor, Mr. Love says that after the Loper Company got their replies in, that he had various conferences with them trying to determine how they should organize and compile their data and on what kind of a basis; that they first considered doing it on a national basis; that they then considered doing it on a regional basis; that this letter that you just read is about the time they were considering doing it on a regional basis and that he did receive some tentative compilations on that basis; that at about that time the Fulbright amendment to the Act was passed, or shortly thereafter, and that before any compilations of any kind were definitely finished or fixed, that the A.C.M.I. realized that there was now the opportunity of requiring that the Secretary of Labor adhere to the locality basis that the statute, we believe, requires and that it was at that point that they began to get legal advice as to whether or not figures should be compiled on a locality basis, and it was at that point, after I entered the case and asked them how local could they get it, that they finally instructed Loper to prepare the figures, the final compilations on a local basis as low as they could, which they said was county, and that's the only basis on which he says they ever got the final figures.

Mr. Kilcullen: Does that mean that the Loper Company did not actually make the summarizations that are described in here?

Mr. Blakeney: I do not know myself.

Mr. Kilcullen: Does Mr. Love know?

533 Mr. Blakeney: I will ask Mr. Love.

He says he did get some tentative compilations.

Mr. Kilcullen: What does he mean by tentative compilations?

Mr. Blakeney: Tentative on a national, tentative on a regional basis.

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539 Mr. Roberts: Mr. Love, I believe you were present at the panel hearing?

Mr. Love: Yes, sir.

Mr. Roberts: And I believe you have been in pretty close contact with us over several months relative to the wage data.

Mr. Love: Relatively so. We tried to find out before the panel hearing, if you recall, what sort of hearing we were going into. We weren't close enough to find that out, but we came on up here.

Mr. Roberts: I'm not quite sure what you mean by that. Do you mean this hearing?

Mr. Love: No, the panel hearing that you referred to.

Mr. Roberts: That's right. But you were here at that time and heard the discussion?

Mr. Love: Oh, yes.

Mr. Roberts: There was a discussion at that time about the wage data, about coverage, and about terms of products, and also coverage of employees. Now, I am speaking not because I was there, but because of the reports that I have routinely received from those who do attend the panel. I note your name there. But since that time we have been in fairly close communication with you; as I recall, you and Mr. Simister attended the conference with the Deputy Administrator and I think with me and I think with Mr. Gronewald.

Mr. Love: And Mr. Sacharoff.

Mr. Roberts: That was in March sometime, wasn't it?

Mr. Love: I don't know. It was after the panel hearing.

Mr. Roberts: It was sometime after the panel hearing?

Mr. Love: Yes.

540 Mr. Roberts: And I think that we all pretty much understood each other in terms of what we all believed the survey would bring forth. It seems to me that this letter of June 2, 1952, which was just introduced in the record, illustrates pretty well the sort of information we felt would come out of the survey you people were making.

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Mr. Roberts: I think you will agree that the forms of the data as they are now are considerably different from
541 any type of data we at any time discussed with you.

Mr. Love: No, I don't think we told you anything about the possibility that we might break it down on a county by county basis.

Mr. Roberts: You mean the possibility that you would break it down exclusively on a county by county basis?

Mr. Love: That we might break it down on a county by county basis.

Mr. Roberts: In connection with the matter of the custodial workers, I believe there was some discussion at the panel meeting itself. It's possible that in the hurley-burley it might have been overlooked. We did at the panel, however, distribute copies of the rulings and interpretation No. 3, giving a description of the types of employees the Secretary had determined to be covered and not covered under Walsh-Healey. Now, do you know whether you supplied that pamphlet to Mr. Loper at the time the questionnaire was produced, at the time the questionnaire was evolved?

Mr. Love: No, I don't believe that we did. We supplied Mr. Sinister with a copy of the definition.

Mr. Roberts: The definition of the industry?

Mr. Love: Yes, as determined by the Secretary. But we never gave him, as far as I can recall, rulings and interpretation No. 3.

Mr. Roberts: Was there any discussion between you and Mr. Sinister of the question of the specific types of em-

ployees excluded from the coverage of the Walsh-Healey Public Contracts Act?.

Mr. Love: Yes, there was. There was considerable discussion between us.

Mr. Roberts: I note that you have left out supervisory employees, for example, and I think Mr. Blakeney said in connection with the exclusion of custodial that he
542 wasn't at all sure that custodial shouldn't be in there, even though they might not be covered by the Public Contracts Act. I notice the same philosophy was not used, however, with reference to the supervisory employees, which leads me to wonder whether, really, in the back of your mind was the thought that you should include in your tabulation custodial workers, even though they were not covered by the Walsh-Healey Act?

Mr. Love: Well, of course, we didn't have much idea that a supervisory employee would be paid at the minimum.

Mr. Roberts: I don't think that was quite my point, Mr. Love. The fact is that the inclusion of all custodial workers results, as I am sure you know, in an inclusion of a great many employees in these tabulations who are not subject to the provisions of the Act under the present regulations of the Secretary, and persons who normally we endeavor to exclude when surveys are made for the purposes of the Public Contracts Act.

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617 THE AMERICAN COTTON MANUFACTURERS INSTITUTE, INC.

203-A Liberty Life Building
Charlotte 2, N. C.
April 2, 1952

IMPORTANT

TO AMERICAN TEXTILE MANUFACTURERS:

Gentlemen:

As you are no doubt aware, the Administrator of the Wage and Hour and Public Contracts Division, through authority delegated by the Secretary of Labor, has indicated that there will shortly be held a formal hearing for the purpose of making a wage determination for minimum wage rates in the textile industry, as defined by the Public Contracts (Walsh-Healey) Act of 1936. This is a matter of importance to the entire industry and, in preparation for making a factual presentation at this hearing, the American Cotton Manufacturers Institute, Inc., has employed the Ralph E. Loper Company, Greenville, South Carolina, to collect certain factual data from the industry.

By way of review, the Walsh-Healey Act sets up certain standards for all companies operating on government contracts of more than $10,000.00. One of these standards requires the payment of the minimum wage rate "as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished . . ." The current Walsh-Healey minimum for the textile industry is 87¢ an hour, and the Textile Workers' Union of America (CIO) has requested an increase to $1.13½, plus a uniform wage escalator provision of 1¢ quarterly adjustment for each 1.32 rise in the consumer's price

index. The United Textile Workers' of America (AF of L) has asked for $1.13 minimum, plus an escalator clause, uniform vacations with pay, holidays and shift premiums.

Thus, you can understand the extreme importance of the survey we have asked the Ralph E. Loper Company to make. The Loper Company is widely known throughout the textile industry. It has made numerous other surveys for the industry, and has made surveys for agencies of the government, such as the War Productioin Board, the Department of Agriculture and others. It has been selected for its efficiency and for its impartiality.

We urge that you *immediately* complete the enclosed brief questionnaire, keep one copy for your files and return the other copy to the Ralph E. Loper Company, Box 868, Greenville, South Carolina. *Your individual reply will be confidential.*

This letter and the questionnaire to which it refers are being sent to several thousand textile manufacturers—all plants which fall within the Walsh-Healey definition of "the textile industry." It is being sent to *all* such plants *without distinction as to whether they are or not members of the Institute.*

Your prompt action is vitally necessary. The industry needs representation on this question, but *we cannot serve you unless we have your cooperation.*

Yours sincerely,

/s/ CHARLES C. HERTWIG

CHARLES C. HERTWIG, *President*

618 Please Return One Copy to

RALPH E. LOPER CO., BOX 868, Greenville, S. C.

Information requested for Minimum Wage Survey—Textile Industry.

Except—Carpets or Rugs containing any wool
Chemical manufacturing of Synthetic Fibers
Woolen system yarns or goods
Yarns containing more than 45% wool by weight
Woven goods containing more than 25% wool by weight
Knitted Goods
Mattress Manufacturers

1. Date
2. Company
3. Address
4. Plant or Division covered by this report:
   Name
   Address
   Description of Products Manufactured
5. Principal Raw Materials Used
   (Please submit separate report for each Plant)

MINIMUM WAGE DATA, ETC.

(Note:—Omit Learners, Office Employees, Handicapped Workers, Supervisors, Executive and Administrative personnel)

6. Present Minimum Wage Rate Per Hour.....$.....
7. What job classifications (occupations) are covered by this minimum rate?.....
   .....
   .....
8. Number of employees normally paid at minimum rate.....

9. Total number of Employees normally employed.....
10. Average straight time wage rate per man hour.....
(Average for 4 most recent weeks)
(Obtain by dividing total (Plant) pay roll, minus overtime, and shift premiums, by man hours worked)

LEARNER WAGE DATA

11. Do you employ Learners at a rate below your regular minimum? .....
12. If you do, what is that rate?.....$.....
13. How many Learners do you customarily have on your payroll? .....
14. Do you have in effect an escalator clause agreement (i. e. Cost of living adjustment)?.....
If so, describe briefly: .....
.....
15. Do you now have in effect a Union Contract covering your employees? .....

Signed.....

Note:—It is understood that identity of individual mill rates will not be disclosed by the Ralph E. Loper Company

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Supplementary Government Exhibits A-1 Through A-8

(p.231)

SUPPLEMENTARY GOVERNMENT EXHIBIT A-1

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Percentage distribution of straight-time average hourly earnings for janitors, battery hands, and truckers, United States and Selected Regions, March 1952

Average hourly earnings (in cents)	United States			North 1/			South 2/		
	Janitors	Battery hands	Hand truckers	Janitors	Battery hands	Hand truckers	Janitors	Battery hands	Hand truckers
Under 90	11.0 100.0	4.6	8.0	4.5	1.3	2.0	11.8	5.2	9.3
90 - 90.9	2.2 89.0	1.1	1.7	1.2	.1	.9	2.3	1.2	1.8
91 - 91.9	2.1 86.8	.7	1.3	.8	-	.1	2.2	.8	1.6
92 - 92.9	3.6 84.7	-	1.4	-	-	.2	3.9	-	1.6
93 - 93.9	8.4 81.1	.2	1.7	-	-	.3	9.3	.2	2.0
94 - 94.9	1.1 72.7	.1	1.4	-	-	-	1.2	.2	1.6
95 - 95.9	2.0 71.6	.4	1.9	2.0	.3	1.6	1.9	.4	2.0
96 - 96.9	3.7 69.6	1.3	1.8	.6	-	-	4.1	1.5	2.2
97 - 97.9	5.4 65.9	.7	2.1	-	-	-	5.9	.8	2.6
98 - 98.9	1.6 60.5	1.0	3.7	-	.1	.1	1.8	1.2	4.5
99 - 99.9	1.9 58.9	.5	1.9	-	-	.1	2.1	.6	2.2
100 - 100.9	7.3 57.0	4.3	6.7	1.8	-	1.2	7.9	5.0	7.7
101 - 101.9	3.4 49.7	3.0	3.3	-	-	-	3.8	3.6	4.0
102 - 102.9	9.7 46.3	8.6	6.0	.5	-	.2	10.7	10.2	7.1
103 - 103.9	16.7 36.6	7.2	7.2	.8	-	.2	18.3	8.4	8.6
104 - 104.9	4.2 19.9	6.1	4.0	.6	1.9	2.4	4.6	6.8	4.3
105 and over	15.7	60.2	45.9	87.2	96.3	90.7	8.2	53.9	36.9
Totals	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

1/ Includes the following states: Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia and Wisconsin.

2/ Includes the following states: Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

(MHS3-599)

SUPPLEMENTARY GOVERNMENT EXHIBIT A-2

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Distribution of establishments by relationship of minimum earned rate of janitors to minimum earned rate of battery hands and of hand truckers and to establishment minimum job rate
United States and Selected Regions, March 1952

	United States		North		South	
	Number	Percent	Number	Percent	Number	Percent
Janitor minimum below battery hand minimum	366	46.0	79	39.5	307	48.0
Janitor minimum at battery hand minimum	72	8.6	16	8.0	56	8.8
Janitor minimum above battery hand minimum	32	3.8	8	4.0	24	3.8
No battery hands	349	41.6	97	48.5	252	39.4
Total establishments	839	100.0	200	100.0	639	100.0
Janitor minimum below hand trucker minimum	295	35.1	55	27.5	240	37.6
Janitor minimum at hand trucker minimum	385	45.9	60	30.0	325	50.9
Janitor minimum above hand trucker minimum	81	9.7	33	16.5	48	7.5
No hand truckers	78	9.3	52	36.0	26	4.0
Total establishments	839	100.0	200	100.0	639	100.0
Janitor minimum below minimum job rate	170	20.3	49	24.5	121	18.9
Janitor minimum at minimum job rate	383	45.6	63	31.5	320	50.1
Janitor minimum above minimum job rate	211	25.2	71	35.5	140	21.9
No established minimum job rate	75	8.9	17	8.5	58	9.1
Total establishments	839	100.0	200	100.0	639	100.0

NOTE: Data in this table relate only to establishments reporting janitors.

(WH53-595)

(p 233)

SUPPLEMENTARY GOVERNMENT EXHIBIT A-3

U. S. DEPARTMENT OF LABOR,
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Number and percent of establishments and total janitors in establishments which pay all janitors at least specified amounts per hour,
United States and Selected Regions, March 1952

All janitors earning at least specified amounts per hour	United States				North				South			
	Establishments		Total janitors		Establishments		Total janitors		Establishments		Total janitors	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
95 cents	543	64.7	6,544	70.4	177	88.5	805	92.1	366	57.3	5,739	68.1
97 cents	497	59.2	5,994	64.5	168	84.0	778	89.1	329	51.5	5,216	61.9
100 cents	401	47.8	4,942	53.1	168	84.0	778	89.1	233	36.5	4,164	49.5
103 cents	267	31.8	3,216	34.6	154	77.0	754	86.3	113	17.7	2,462	29.2
Total plants and janitors	839	100.0	9,299	100.0	200	100.0	874	100.0	639	100.0	8,425	100.0

NOTE: Data in this table relate only to establishments reporting janitors.

(665-53HM)

SUPPLEMENTARY GOVERNMENT EXHIBIT A-4

(p 234)

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Number and percent of establishments and total battery hands and hand truckers in establishments which pay all battery hands and hand truckers at least specified amounts per hour, United States and Selected Regions, March 1952

All battery hands and hand truckers earning at least specified amounts per hour	United States				North				South			
	Establishments		Total battery hands and hand truckers		Establishments		Total battery hands and hand truckers		Establishments		Total battery hands and hand truckers	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
95 cents	642	68.7	24,570	73.3	223	84.8	4,297	90.5	419	62.4	20,173	70.2
97 cents	587	62.8	21,982	65.6	215	81.8	4,175	87.9	372	55.4	17,807	61.9
100 cents	499	53.4	18,861	56.3	211	80.2	4,167	87.8	288	42.9	14,694	51.1
103 cents	364	38.9	13,975	41.7	200	76.0	4,134	87.1	164	24.5	9,841	34.2
Total plants and battery hands and hand truckers	934	100.0	33,500	100.0	263	100.0	4,748	100.0	671	100.0	28,752	100.0

NOTE: Data in this table relate only to establishments reporting battery hands and/or hand truckers.

(WH55-599)

SUPPLEMENTARY GOVERNMENT EXHIBIT A-5

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Percentage Distribution of establishments and Production Workers (Excluding Learners and Handicapped Workers) by Minimum Earned Rate for Janitors,
United States and Selected Regions, March 1952

Minimum earned rate of Janitors (in cents)	United States		North		South	
	Establishments	Production Workers	Establishments	Production Workers	Establishments	Production Workers
Under 90	21.0 100.0	14.0 100.0	7.0	3.0	25.4	15.9
90 - 90.9	4.9 79.0	3.2 86.0	3.5	1.5	5.3	3.5
91 - 91.9	1.0 74.1	1.6 82.8	1.0	.5	.9	1.8
92 - 92.9	3.2 73.1	3.6 81.2	-	-	4.2	4.2
93 - 93.9	3.2 69.9	4.2 77.6	-	-	4.2	5.0
94 - 94.9	2.0 66.7	2.9 73.4	-	-	2.7	3.4
95 - 95.9	1.7 64.7	2.3 70.5	2.0	2.8	1.6	2.2
96 - 96.9	3.8 63.0	4.2 68.2	2.5	1.3	4.2	4.8
97 - 97.9	7.4 59.2	6.2 64.0	-	-	9.7	7.3
98 - 98.9	1.5 51.8	2.3 57.8	-	-	2.0	2.7
99 - 99.9	2.5 50.3	2.9 55.5	-	-	3.3	3.4
100 - 100.9	6.6 47.8	8.1 52.6	6.5	2.0	6.6	9.2
101 - 101.9	1.9 41.2	3.0 44.5	-	-	2.2	3.6
102 - 102.9	7.7 39.5	8.2 41.5	.5	.4	10.0	9.6
103 - 103.9	9.1 31.8	15.1 33.3	1.0	.2	11.6	17.8
104 - 104.9	2.5 22.7	2.8 18.2	1.5	.6	2.8	3.2
105 and over	20.2	15.4	74.5	87.7	3.3	2.4
Total	100.0	100.0	100.0	100.0	100.0	100.0
Number of establishments	839		200		639	
Number of production workers		449,872		68,808		381,064

(WHS3-599)

NOTE: Data in this table relate only to establishments reporting janitors.

SUPPLEMENTARY GOVERNMENT EXHIBIT A-6

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Percentage Distribution of Establishments and Production Workers (Excluding Learners and Handicapped Workers) by Minimum Earned Rate for Hand Truckers and Battery Hands Combined, United States and Selected Regions, March 1952

Minimum earned rate of hand truckers and battery hands combined (in cents)	United States		North		South	
	Establishments	Production workers	Establishments	Production workers	Establishments	Production Workers
Under 90	16.7	15.3	8.0	4.8	20.0	17.4
90 - 90.9	5.8	2.6	5.3	1.8	6.0	2.6
91 - 91.9	1.6	1.9	--	--	2.2	2.3
92 - 92.9	2.6	3.6	--	--	3.6	4.3
93 - 93.9	2.7	3.8	1.9	1.1	3.0	4.4
94 - 94.9	1.9	2.0	--	--	2.7	2.4
95 - 95.9	3.0	3.1	3.0	2.2	3.0	3.3
96 - 96.9	2.9	3.4	--	--	4.0	4.0
97 - 97.9	4.5	2.7	--	--	6.3	3.2
98 - 98.9	1.5	1.4	.8	.2	1.8	1.7
99 - 99.9	3.4	3.8	.8	.2	4.5	4.5
100 - 100.9	6.9	7.7	3.8	1.0	8.0	9.0
101 - 101.9	2.2	3.0	--	--	3.1	3.6
102 - 102.9	3.4	4.5	.4	.1	7.3	5.4
103 - 103.9	5.2	8.9	--	--	7.3	10.7
104 - 104.9	3.1	3.4	1.9	2.5	3.6	3.6
105 and over	30.6	28.9	74.1	86.1	13.6	17.4
Total	100.0	100.0	100.0	100.0	100.0	100.0
Number of establishments	934		263		671	
Number of production workers		466,049		78,654		387,395

Note: Data in this table relate only to establishments reporting hand truckers and/or battery hands

(WH53-599)

SUPPLEMENTARY GOVERNMENT EXHIBIT A-7

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Percentage Distribution of Establishments and Production Workers (Excluding Learners and Handicapped Workers) by Establishment Minimum Job Rate for Establishments Reporting No Janitors, United States and Selected Regions, March 1952

Establishment minimum job rate (in cents)	United States		North		South	
	Establishments	Production Workers	Establishments	Production Workers	Establishments	Production Workers
Under 90	21.2	24.8	12.2	7.3	48.0	56.4
90 - 90.9	8.1	4.8	7.4	3.6	10.4	6.9
91 - 91.9	-	-	-	-	-	-
92 - 92.9	.3	.7	.4	1.2	-	-
93 - 93.9	.7	.3	.9	.5	-	-
94 - 94.9	.7	1.2	-	-	2.6	3.5
95 - 95.9	5.5	4.5	3.5	3.2	11.7	7.0
96 - 96.9	2.0	1.1	2.6	1.7	-	-
97 - 97.9	.7	.4	.9	.6	-	-
98 - 98.9	-	-	-	-	-	-
99 - 99.9	-	-	-	-	-	-
100 - 100.9	15.4	11.9	13.5	10.4	20.8	14.5
101 - 101.9	-	-	-	-	-	-
102 - 102.9	1.3	4.1	.9	.3	2.6	11.0
103 - 103.9	-	-	-	-	-	-
104 - 104.9	-	-	-	-	-	-
105 and over	35.9	43.9	48.1	68.0	-	-
No established rate	8.2	2.3	9.6	3.2	3.9	.7
Total	100.0	100.0	100.0	100.0	100.0	100.0
Number of establishments	306		229		77	
Number of production workers		32,143		20,709		11,434

(H53-599)

SUPPLEMENTARY GOVERNMENT EXHIBIT A-8

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
DIVISION OF WAGES AND INDUSTRIAL RELATIONS
WASHINGTON 25, D. C.

COTTON AND SYNTHETIC TEXTILE INDUSTRY:
Percentage Distribution of Establishments and Production Workers (Excluding Learners and Handicapped Workers) by Establishment Minimum Job Rate for Establishments Reporting Neither Hand Truckers Nor Battery Hands, United States and Selected Regions, March 1952

Establishment Minimum job rate (in cents)	United States		North		South	
	Establishments	Production Workers	Establishments	Production Workers	Establishments	Production Workers
Under 90	15.2	16.3	13.3	15.5	22.2	18.1
90 - 90.9	6.6	2.7	8.4	4.0	—	—
91 - 91.9	—	—	—	—	—	—
92 - 92.9	—	—	—	—	—	—
93 - 93.9	3.3	3.9	—	—	15.6	12.2
94 - 94.9	.9	2.5	—	—	4.4	7.8
95 - 95.9	6.6	7.5	4.8	6.0	13.3	10.5
96 - 96.9	—	—	—	—	—	—
97 - 97.9	.9	.8	1.2	1.2	—	—
98 - 98.9	—	—	—	—	—	—
99 - 99.9	2.4	8.7	—	—	11.1	27.4
100 - 100.9	17.2	15.8	12.7	11.9	33.4	24.0
101 - 101.9	—	—	—	—	—	—
102 - 102.9	.9	.5	1.2	.7	—	—
103 - 103.9	—	—	—	—	—	—
104 - 104.9	—	—	—	—	—	—
105 and over	35.6	35.2	45.1	51.7	—	—
No established rate	10.4	6.1	13.3	9.0	—	—
Total	100.0	100.0	100.0	100.0	100.0	100.0
Number of establishments	211		166		45	
Number of production workers		15,966		10,863		5,103

(WH53-599)

1312 (Filed November 18, 1954).

Order of Consolidation

It appearing to the Court that motions to dismiss or in the alternative for summary judgment will shortly be served by the defendant upon the plaintiffs in each of the two above-captioned cases and it appearing that the motions will be similar in form and will involve common questions of law, it is hereby

ORDERED that the said motions should be and they hereby are consolidated for hearing.

/s/ MATTHEW F. McGUIRE
Judge

11/18/54

Submitted by:
/s/ EDWARD H. HICKEY
Attorney for Defendant

Seen:
/s/ LLEWELLYN C. THOMAS
Attorney for Plaintiffs

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637 (Filed December 31, 1954)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 259-53

COVINGTON MILLS, *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant.*

Civil Action No. 614-53

ALABAMA MILLS, *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant.*

Defendant's Motion to Dismiss and for Summary Judgment

Now comes the defendant, James P. Mitchell, Secretary of Labor, and upon all the pleadings, the record of the ad-

ministrative proceedings filed herein, plaintiffs' answers to defendant's interrogatories, and the affidavit of Maurice Tobin, former Secretary of Labor, respectfully moves this Court to dismiss the complaints of those plaintiffs listed in Tables 1 through 6 hereto annexed on the ground that they are without standing to sue, in that:

1. The plaintiffs listed in Table 1 failed to seek judicial review within 90 days after the making of the prevailing minimum wage determination complained of;

2. The plaintiffs listed in Table 2 already pay all of their employees in the branch of the industry to which said determination applies wages equal to or greater than the amount it provides;

3. None of the plaintiffs listed in Table 3 has, or at any significant time has had, any work to which said determination could apply, and therefore their asserted interest or damage is wholly speculative and remote;

638 4. The plaintiffs listed in Table 4 already pay to all of their employees who work on the Government contracts to which said determination applies wages equal to or greater than the amount it provides;

5. Each of the plaintiffs listed in Table 5 operates plants in compliance with the wage requirements of said determination, which plants are wholly adequate to perform the Government contract work to which the determination is restricted, and therefore none of these plaintiffs can suffer any damage or injury from the actions complained of;

6. The alleged interest of the plaintiffs listed in Table 6 or any damage to them resulting from the determination complained of is only nominal and insubstantial.

As to the remaining 14 plaintiffs not mentioned above, and as to any others who may be found by this Court to have standing to challenge the validity of the determination here in issue, the defendant respectfully moves for summary judgment on the ground that there is no genuine

issue as to any material fact, and that defendant is entitled to judgment as a matter of law.

In support of this motion, the Court is respectfully referred to the annexed memorandum of points and authorities.

WARREN E. BURGER
Assistant Attorney General

EDWARD H. HICKEY

ARTHUR H. FRIBOURG
Attorneys, Department of Justice

Of Counsel:
STUART ROTHMAN
Solicitor
BESSIE MARGOLIN
JOHN J. BABE
WILLIAM A. LOWE
Attorneys, Department of Labor

639 TABLE 1

Plaintiffs who did not move for judicial review within 90 days after the wage determination was made

Caldwell Cotton Mill Company, April 22, 1953
Dacotah Cotton Mills, Inc., April 16, 1953
Dover Yarn Mill, Inc., April 22, 1953
Hayes Cotton Mill Co., April 22, 1953
Henry River Mills Co., Inc., July 27, 1953
Hudson Cotton Mfg. Co., April 22, 1953
The Jefferson Mills, Inc., April 16, 1953
Moore Cotton Mill Company, April 22, 1953
The Strickland Cotton Mills, April 22, 1953
Washington Manufacturing Company, Inc., April 16, 1953

TOTAL—10

640 TABLE 2

Plaintiffs observing a minimum wage of $1.00 or more per hour throughout 1952 and 1953 (e.g. prior to the promulgation of this determination)

Aleo Manufacturing Company
Alice Manufacturing Company
Anchor Rome Mills, Inc.
Belle Vue Manufacturing Company
Bishopville Finishing Company
Clifton Manufacturing Company
Corriher Mills Company
=Covington Mills
Crompton-Highlands Mills, Inc.
Crompton-Shenandoah Company, Inc.
Farmac Mills, Inc.
B. F. Goodrich Company (Martha Mills Div.)
Hart Cotton Mills, Inc.
Hartwell Mills
Highland Park Manufacturing Company
Huntsville Manufacturing Company
Inman Mills
Jewell Cotton Mills, Inc.
Kerr Bleaching & Finishing Works, Inc.
Limestone Manufacturing Company
Linn Mills Company
=Mary-Leila Cotton Mills, Inc.
Patterson Mills Company
Pelzer Mills
Pickens Mill
Picket Cotton Mills, Inc.
Riverdale Mills
Roanoke Mills Company
Rosemary Manufacturing Company
South Carolina Mills
Spartan Mills
Textron, Inc.
Valdese Manufacturing Company
Warrier Duck Mills
Willingham Cotton Mills

TOTAL—35

= Plaintiffs in Covington case.

641 TABLE 3

Plaintiffs who have had no work to which this determination would apply since January 1, 1952.

Aleo Manufacturing Company
Alice Manufacturing Company
Arkansas Cotton Mills, Inc.
Atlantic Cotton Mills
Belle Vue Manufacturing Company
Bishopville Finishing Company
Bonham Cotton Mills
Brenham Cotton Mills, Inc.
Calhoun Mills
Carolinian Mills, Inc.
Chiquola Manufacturing Company
Clayton Spinning Company
Columbia Manufacturing Company
Corriher Mills Company
Corsicana Cotton Mills, Inc.
#Covington Mills
Denison Cotton Mill Company
Dixie Mills, Inc.
Eastern Manufacturing Company
Elk Cotton Mills
B. F. Goodrich Company (Martha Mills Div.)
Guadalupe Valley Cotton Mills
Harden Manufacturing Company, Inc.
Hart Cotton Mills, Inc.
Hartwell Mills
Hayes Cotton Mill Company
Hillsboro Cotton Mills
Holt Williamson Manufacturing Company
Hudson Cotton Manufacturing Company.
Huntsville Manufacturing Company
Inman Mills
J & J Spinning Mills
Johnston Manufacturing Company
#Jordan Mills, Inc.
Juliette Milling Company
Linn Mills Company
Majestic Manufacturing Company
Manetta Mills

Plaintiffs in Covington case.

TABLE 3 (Continued)

#Mary-Leila Cotton Mills, Inc.
Mauney Mills, Inc.
Moore Cotton Mill Company
#Moultrie Cotton Mills
Nuway Spinning Company, Inc.
Orr Mills

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Patterson Mills Company
Peck Manufacturing Company of North Carolina, Inc.
F. W. Poe Manufacturing Company
Postex Cotton Mills
Rhyne-Houser Manufacturing Company
Riverdale Mills
Roanoke Mills Company
Rushton Cotton Mills
Sherman Manufacturing Company
Shuford Mills, Inc.
Spinners Processing Company
Strickland Cotton Mills
#Union Manufacturing Company
Valdese Manufacturing Company
Walton Cotton Mills Company
Waxhaw Manufacturing Company

TOTAL—60

Plaintiffs in Covington case.

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TABLE 4

Plaintiffs who paid wages equalling or exceeding those required by this determination all during 1953 notwithstanding the injunction excusing them from this requirement

Erwin Mills, Inc.
Greenwood Mills
Union Mills Company
Washington Manufacturing Company, Inc.

TOTAL—4

644 TABLE 5

Plaintiffs whose plants observing a minimum wage of $1.00 or more throughout 1952 and 1953 are adequate to accommodate their Government business.

Coats and Clark, Inc.
Pacific Mills
Pepperell Manufacturing Company
J. P. Stevens & Company, Inc.
U. S. Rubber Company, Textile Division
TOTAL—5

643 TABLE 6

Plaintiffs whose wage deficiencies, had this order been in effect in 1952 and 1953, would have been insubstantial, because less than 1 percent of their total payrolls for those years

Company	Deficiency as percent of total payroll 1952-1953
Alabama Mills	0.03%
American & Efird Mills Inc.	0.20
Arkwright Mills Corp.	0.08
Bibb Manufacturing Co.	0.03
Bowling Green Spinning Co.	0.24
Caldwell Cotton Mill Co.	0.82
Carolina Mills, Inc., Maiden, N. C.	0.11
Cartex Div., Carlton Yarn Mills, Inc.	0.97
Chesnee Mills	0.09
Chronicle Mills	0.07
Coats & Clark, Inc.	0.08
Columbus Manufacturing Co.	0.11
Dacotah Cotton Mills, Inc.	
Dover Yarn Mills Inc.	0.69
Dundee Mills, Inc.	0.01
The Dunson Mills, Div. of Pepperell Mfg. Co.	0.02
Eagle & Phenix Div., Fairforest Co.	0.79
Eastman Cotton Mills	0.41
Fairforest Co., Finishing Div.	0.27
#Fulton Bag & Cotton Mills	
Gastonia Combed Yarn Corp.	0.99
Gem Yarn Mills	0.98
Georgia Duck & Cordage Mills	0.11
Globe Mills Co.	0.34
Grace Cotton Mills	0.07

TABLE 6(Continued)

Company	Deficiency as percent of total payroll 1952-1953
Graniteville Co.	0.16
Harden Spinning Co.	0.27
Imperial Yarn Mills, Inc.	0.60
Jefferson Mills, Inc.	0.57
Lane Cotton Mills Co.	0.01
Leward Cotton Mills, Inc.	0.28
Lowell Bleachery	0.23
Mills Mill	0.09
Mooresville Mills	0.50
Morgan Cotton Mills, Inc.	0.13
National Yarn Mills, Inc.	0.30
Naumkeag Steam Cotton Co.	0.02
Opp Cotton Mills	0.84
Osage Manufacturing Co.	0.03
Pacific Mills	*
Pepperell Manufacturing Co.	0.01
Piedmont Cotton Mills, Inc.	0.57
646	
Quaker Meadow Mills, Inc.	0.13%
Rex Mills, Inc.	0.65
Robinson Mills Inc.	0.18
A. M. Smyre Manufacturing Co.	0.96
Springs Cotton Mills	0.04
J. P. Stevens & Co., Inc.	0.02
Stowe Spinning Co.	0.29
Stowe Thread Co.	0.96
Textiles, Inc.	0.66
Thomaston Cotton Mills	0.08
Tolar, Hart & Holt Mills, Inc.	0.16
Trenton Cotton Mills	0.81
U. S. Rubber Company, Textile Div.	0.06
Waverly Mills, Inc.	0.03
Weldon Mills, Inc.	0.57
Wellington Mills	*
West Point Manufacturing Co.	0.20
Riegel Textile Corp.	0.09
Lanett Bleachery & Dye Works	0.00**
TOTAL—61	

* Less than .005 percent.

** This company is shown on this table rather than table 3 because, though it reported no Government contracts during 1952-1953, it has filed a bond in this action for one contract in 1954.

781 (Filed March 7, 1955)

Motion for Summary Judgment

Now Come the plaintiffs, and upon the pleadings, the answers to interrogatories, the plaintiffs' affidavits, the stipulations and admissions of counsel and the record of the administrative proceeding referred to in the pleadings, all of which are on file herein, the plaintiffs do hereby move for judgment:

Declaring that the decree or determination referred to in the complaints is unlawful and void and staying the same from going into effect and restraining and enjoining the defendant, and his agents, representatives and successors in office, from putting the said decree or determination into effect.

For the reasoning and authority supporting this motion, the plaintiffs respectfully refer the Court to the brief which is filed herewith.

Flannery, Craighill & Aiello
By:
Llewellyn C. Thomas
901 Hibbs Building
Washington, D. C.

782 Gambrell, Harlan, Barwick,
Russell & Smith
By:
W. Glen Harlan
825 Citizens & Southern National Bank Building
Atlanta, Georgia

Jones, Sparks, Benton & Cork
By:
Charles M. Cork
Persons Building
Macon, Georgia

PIERCE AND BLAKENEY
By:
WHITEFORD S. BLAKENEY
Johnston Building
Charlotte, North Carolina
Attorneys for the Plaintiffs

1353 (Filed March 7, 1955)

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

I am an official of Textiles, Inc., which is one of the plaintiffs in the above-entitled case. For many years I have been engaged in the textile business and am familiar with the general practices of the industry with respect to employees' wages.

I can state of my personal knowledge that throughout the textile industry whenever a Company raises the wages of its lower paid employees, it also raises the wages of substantially all of its production and maintenance employees in such manner as to preserve and maintain previously existing wage differentials. This is necessary in order to continue to provide inducement to employees in lower paid jobs to improve their skills and abilities and move on into the more difficult and higher paying jobs. Employees in the higher paying jobs expect and demand that their wages shall move up whenever wages in the lower paying jobs move up. This upward movement of the entire wage structure, whenever the lower paying jobs are moved up, is universally accepted and practiced throughout the textile industry.

Whenever wages in the lower paying jobs are moved up, the accompanying upward movement of wages in all the other production and maintenance jobs is far more costly, in the case of virtually any Company in the textile busi-

ness, than is the moving up of simply the lower paying jobs.

/s/ DON MADDOX

Subscribed and sworn to before me,
this the 4 day of March, 1955.

/s/ W. J. TERRY
Notary Public.
County of Gaston
State of North Carolina
My commission expires: July 19, 1956

1354 (Filed March 7, 1955)

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

I am a Vice-President of J. P. Stevens & Co., Inc., which is one of the plaintiffs in the above-entitled case. For many years I have been engaged in the textile business and am familiar with the general practices of the industry with respect to employees' wages.

I can state of my personal knowledge that throughout the textile industry whenever a Company raises the wages of its lower paid employees, it also raises the wages of substantially all of its production and maintenance employees in such manner as to preserve and maintain previously existing wage differentials. This is necessary in order to continue to provide inducement to employees in lower paid jobs to improve their skills and abilities and move on into the more difficult and higher paying jobs. Employees in the higher paying jobs expect and demand that their wages shall move up whenever wages in the lower paying jobs move up. This upward movement of the entire wage structure, whenever the lower paying jobs are moved up, is universally accepted and practiced throughout the textile industry.

Whenever wages in the lower paying jobs are moved up, the accompanying upward movement of wages in all the other production and maintenance jobs is far more costly, in the case of virtually any company in the textile business, than is the moving up of simply the lower paying jobs.

/s/ J. W. Wood

Subscribed and sworn to before me,
this the 4th day of March, 1955.

/s/ Ivie H. Gulledge
Notary Public.
County of Mecklenburg
State of North Carolina.
My commission expires: May 19, 1955

1355 (Filed March 7, 1955)

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

I am a Vice-President of J. P. Stevens & Co., Inc., which is one of the plaintiffs in the above-entitled case.

This Company has, over the years, done a large volume of business in the fulfillment of contracts let by the United States Government. The bulk of such business has been in cotton textile products as distinguished from synthetic textile products. It would not be practicable for this Company to undertake to fulfill such Government contracts solely in its plants paying a minimum wage of $1.00 per hour or more. To undertake to channel all such Government business into such plants solely would moreover substantially increase the costs of fulfilling such contracts as regards manufacturing costs, transportation costs and otherwise. If this Company were under any necessity of diverting and routing Government contracts among its plants on this basis, the Company would certainly not be

able on any profitable basis to handle the volume of Government business which it has handled in the past.

/s/ J. W. Wood

Subscribed and sworn to before me,
this the 4th day of March, 1955

/s/ Ivie H. Gulledge
Notary Public.
County of Mecklenburg
State of North Carolina
My commission expires: May 19, 1955

1356 (Filed March 7, 1955)

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

The lists of plaintiffs executing affidavits and the calculations constituting an extension of Table 6 attached to the plaintiffs' Motion to Dismiss, all of which are filed herewith, have been prepared under my personal observation and direction. To the best of my knowledge and belief, these lists and calculations are accurate and complete.

Thos. N. Ingram

Subscribed and sworn to before me,
this the 5th day of March, 1955.

Ivie H. Gulledge
Notary Public.
County of Mecklenburg
State of North Carolina
My commission expires: May 19, 1955
(SEAL)

1357 (Filed March 7, 1955)

LIST OF PLAINTIFFS EXECUTING WHITE AFFIDAVIT

Alabama Mills, Inc.
American & Efird Mills, Inc.
Arkwright Mills.
Balston Yarn Mills, Inc.
Bibb Manufacturing Company
Bowling Green Spinning Co., Inc.
Carlton Yarn Mills, Inc.
Carlton Yarn Mills, Inc. (Cartex Division)
Carolina Mills, Inc. (Maiden, N. C.)
Chesnee Mills
The Chronicle Mills
Climax Spinning Company
Coats & Clark, Inc.
Columbus Manufacturing Company
The Corsicana Cotton Mills
Dacotah Cotton Mills, Inc.
Denison Cotton Mill Company
Dixie Mills Incorporated
Dover Yarn Mills, Inc.
Dundee Mills, Incorporated
Eastment Cotton Mills
Elk Cotton Mills
Fairforest Company, Eagle & Phenix Division
Fairforest Company, Fairforest Finishing Division
Gastonia Combed Yarn Corporation
The Gem Yarn Mills
Globe Mills Company
Grace Cotton Mill Company
Graniteville Company
Greenwood Mills
Gurney Manufacturing Company
Harden Spinning Company, Inc.
Henry River Mills Company
Holt-Williamson Mfg. Company
Imperial Yarn Mills, Inc.
Irene Mills
J. P. Stevens & Co.
The Jefferson Mills, Inc.
Johnston Manufacturing Company
Leward Cotton Mills, Inc.
Lowell Bleachery South

Majestic Manufacturing Company
Micholas Cotton Mills, Inc.
Mills Mill, Incorporated
Mooresville Mills
National Yarn Mills, Inc.
Naumkeag Steam Cotton Company
Opp Cotton Mills, Inc.
1358 Osage Manufacturing Company
Pacific Mills
Park Yarn Mills Company
Peerless Spinning Corporation
Pepperell Manufacturing Company
Piedmont Cotton Mills
Quaker Meadows Mills, Inc.
Rex Mills, Inc.
Riegel Textile Corporation
Robinson Mills, Inc.
Rushton Cotton Mills
Sherman Manufacturing Company
Shuford Mills, Inc.
A. M. Smyre Manufacturing Co.
Springs Cotton Mills
Sterling Spinning Company
Stowe Spinning Company.
Stowe Thread Company
Superior Yarn Mills, Inc.
Textiles-Incorporated.
Thomaston Mills
Threads-Incorporated
Tolar, Hart & Holt Mills, Inc.
Trenton Cotton Mills
U. S. Rubber Company
Union Mills Company
Walton Cotton Mill Company
Washington Manufacturing Company
Waverly Mills, Incorporated
West Point Manufacturing Company
Worth Spinning Company
United Spinners Corporation
Weldon Mills
Nt. Monroe Mills Co. is now out of business.

1359 List of Plaintiffs Executing Green Affidavit

Arkansas Cotton Mills, Inc.
Bonham Cotton Mills
Brenham Cotton Mill, Inc.
Caldwell Cotton Mill Company
Calhoun Mills
Chiquola Manufacturing Company
Clayton Spinning Company, Inc.
Eastern Manufacturing Company
Elk Cotton Mills
Guadalupe Valley Cotton Mills
Harden Manufacturing Company, Inc.
Hayes Cotton Mill Company
Hillsboro Cotton Mills
Hudson Cotton Manufacturing Company
J & J Spinning Mills
Juliette Milling Company
Manetta Mills
Mauney Mills, Inc.
Micholas Cotton Mills, Inc.
Moore Cotton Mill Company
Morgan Cotton Mills
Nuway Spinning Company, Inc.
Opp Cotton Mills, Inc.
Peck Manufacturing Co., Inc.
Postex Cotton Mills, Inc.
F. W. Poe Manufacturing Company
Spinners Processing Company
Strickland Cotton Mills
United Spinners Corporation
Waxhaw Manufacturing Company, Inc.

1360 List of Plaintiffs Executing Pink Affidavit

Alabama Mills, Inc.
American & Efird Mills, Inc.
Bibb Manufacturing Company
Bonham Cotton Mills
Carlton Yarn Mills, Inc.
Carlton Yarn Mills, Inc. Cartex Division
Chesnee Mills
Clifton Manufacturing Company
Coats & Clark, Inc.
Columbus Manufacturing Company

Dunlee Mills, Incorporated
Fairforest Company, Eagle & Phenix Division
Fairforest Company, Fairforest Finishing Division
Gastonia Combed Yarn Corporation
Grace Cotton Mill Company
Graniteville Company
Greenwood Mills
Gurney Manufacturing Company
Hartwell Mills
Holt-Williamson Mfg. Company
Inman Mills
Inman Mills—Riverdale Division
Irene Mills
Jewell Cotton Mills
Johnston Manufacturing Company
Linn Mills Company
Mills Mill, Incorporated
Naumkeag Steam Cotton Company
Osage Manufacturing Company
Pacific Mills
Park Yarn Mills Company
Patterson Mills Company, Incorporated
Piedmont Cotton Mills
F. W. Poe Manufacturing Company
Postex Cotton Mills
Riegel Textile Corporation
Roanoke Mills Company
Rosemary Manufacturing Company
South Carolina Mills
Spartan Mills
Spinners Processing Company
Springs Cotton Mills
Threads-Incorporated
Waverly Mills, Incorporated
West Point Manufacturing Company
Worth Spinning Company
Weldon Mills

1361 List of Plaintiffs Executing Yellow Affidavit

Alabama Mills, Inc.
Aleo Manufacturing Company
American & Efird Mills, Inc.
Anchor Rome Mills, Inc.
Arkansas Cotton Mills
Arkwright Mills

Balston Yarn Mills, Inc.
Belle-Vue Manufacturing Company
Bibb Manufacturing Company
Bonham Cotton Mills
Bowling Green Spinning Co., Inc.
Caldwell Cotton Mill Company
Calhoun Mills
Carlton Yarn Mills, Inc.
Carlton Yarn Mills, Inc., (Cartex Division)
Carolina Mills, Inc. (Maiden, N. C.)
Chesnee Mills
Chiquola Manufacturing Company
The Chronicle Mills
Clayton Spinning Company
Climax Spinning Company, Inc.
Coats & Clark, Inc.
Columbus Manufacturing Company
The Corsicana Cotton Mills
Crompton Highland Mills
Crompton-Shenandoah Company
Dacotah Cotton Mills, Inc.
Denison Cotton Mills Company
Dixie Mills Incorporated
Dundee Mills, Incorporated
Eastern Manufacturing Company
Eastman Cotton Mills
Elk Cotton Mills
Fairforest Company, Eagle & Phenix Division
Fairforest Company, Fairforset Finishing Division
Gastonia Combed Yarn Corporation
The Gem Yarn Mills
Globe Mills Company
Grace Cotton Mill Company
Graniteville Company
Greenwood Mills
Gurney Manfuacturing Company
Harden Manufacturing Company, Inc.
Harden Spinning Company, Inc.
Hartwell Mills
Hayes Cotton Mill Company
Henry River Mills Company
Holt-Williamson Mfg. Company
Hudson Cotton Manufacturing Company
Huntsville Manufacturing Company

1362 Imperial Yarn Mills, Inc.
Inman Mills.
Inman Mills—Riverdale Division
Irene Mills
J & J Spinning Mills
Jefferson Mills, Inc.
Jewell Cotton Mills Incorporated
Johnston Manufacturing Company
Juliette Milling Company
Lane Cotton Mills Company
Leward Cotton Mills, Inc.
Linn Mills Company
Lowell Bleachery South
Majestic Manufacturing Company
Manetta Mills
Micolas Cotton Mills, Inc.
Mills Mill, Incorporated
Moore Cotton Mill Company
Mooresville Mills
Morgan Cotton Mills
National Yarn Mills, Inc.
Naumkeag Steam Cotton Company
Opp Cotton Mills, Inc.
Osage Manufacturing Company
Pacific Mills
Park Yarn Mills Company.
Patterson Mills Company, Incorporated
Peck Manufacturing Company, Inc.
Peerless Spinning Corporation
Pelzer Mills
Pickens Mill
Piedmont Cotton Mills, Inc.
F. W. Poe Manufacturing Company
Quaker Meadow Mills, Inc.
Rex Mills, Inc.
Roanoke Mills Company
Robinson Mills, Inc.
Rosemary Manufacturing Company
Rushton Cotton Mills
Sherman Manufacturing Company
Shuford Mills, Inc.
A. M. Smyre Manufacturing Co.
South Carolina Mills
Spartan Mills
Spinners Processing Company

Springs Cotton Mills
Sterling Spinning Company
Stowe Spinning Company
Stowe Thread Company
Strickland Cotton Mills
Superior Yarn Mills, Inc.
Textiles-Incorporated
Textron Incorporated
1363 Thomaston Mills
Threads-Incorporated
Tolar, Hart & Holt Mills, Inc.
Trenton Cotton Mills
Union Mills Company
United Spinners Corporation
Walton Cotton Mill Company
Washington Manufacturing Company
Waverly Mills, Incorporated
Waxhaw Manufacturing Company, Inc.
West Point Manufacturing Company
Willingham Cotton Mills
Worth Spinning Company
Weldon Mills

1364 EXTENSION OF TABLE 6 ATTACHED TO DEFENDANT'S MOTION TO DISMISS

Plaintiff	Percentage of Total Payroll Represented by Wages at Less Than $1.00 an Hour 1952-1953	Total Payroll 1952-1953	Amount of Wages Paid at Less Than $1.00 an Hour 1952-1953
Alabama Mills	0.03%	$ 2,965,787.50	$ 889.74
American & Efird Mills, Inc.	0.20	9,048,632.24	18,097.26
Arkwright Mills Corp.	0.08	3,645,068.90	2,916.06
Bibb Manufacturing Co.	0.03	31,077,038.53	9,323.11
Bowling Green Spinning Co.	0.24	555,630.56	1,333.51
Caldwell Cotton Mill Co.	0.82	937,531.26	7,687.76
Carolina Mills, Inc.	0.11	3,717,744.17	4,089.52
Carlex Div., Carlton Yarn Mills, Inc.	0.97	2,010,881.15	19,505.55
Chesnee Mills	0.09	2,888,849.03	2,599.96
Chronicle Mills	0.07	1,472,826.00	1,030.98
Coats & Clark, Inc.	0.08	25,899,595.00	20,719.68
Columbus Manufacturing Co.	0.11	7,305,697.71	8,036.27
Dacotah Cotton Mills, Inc.	*	*	*
Dover Yarn Mills, Inc.	0.69	379,665.60	2,619.69
Dundee Mills, Inc.	0.01	8,575,163.05	857.52
The Dunson Mills, Div. of Pepperell Mfg. Co.	0.02	6,213,[illegible]	1,242.68
Eagle & Phenix Div., Fairforest Co.	0.79	8,353,450.37	65,992.26

Plaintiff	Percentage of Total Payroll Represented by Wages at Less Than $1.00 an Hour 1952-1953	Total Payroll 1952-1953	Amount of Wages Paid at Less Than $1.00 an Hour 1952-1953
Eastman Cotton Mills	0.41	1,343,067.29	5,506.58
Fairforest Co., Finishing Div.	0.27	3,388,483.15	9,148.90
Fulton Bag & Cotton Mills			
Gastonia Combed Yarn Corp.	0.99	3,415,710.35	33,815.53
Gem Yarn Mills	0.98	358,692.90	3,515.19
Georgia Buck & Cordage Mills	0.11	1,191,356.78	1,310.49
Globe Mills Co.	0.34	1,553,829.51	5,283.02
Grace Cotton Mills	0.87	834,987.72	584.49
Graniteville Co.	0.16	19,833,398.00	31,733.76
Harden Spinning Co.	0.27	253,125.33	683.44
Imperial Yarn Mills, Inc.	0.60	1,116,145.00	6,696.87
Jefferson Mills, Inc.	0.57	4,923,796.01	28,065.64
Lane Cotton Mills Co.	0.01	6,390,926.15	639.09
Lewaro Cotton Mills, Inc.	0.28	1,259,179.50	3,525.70
Lowell Bleachery	0.23	3,261,737.58	7,502.00
Mills Mill	0.09	9,224,426.78	8,301.98
Mooresville Mills	0.50	13,843,562.01	69,217.81
Morgan Cotton Mills, Inc.	0.13	4,760,768.35	6,189.00
National Yarn Mills, Inc.	0.30	1,183,343.00	3,550.03
Naumkeag Steam Cotton Co.	0.02	3,756,652.19	751.33
Opp Cotton Mills	0.84	1,955,227.86	16,423.94
Osage Manufacturing Co.	0.03	1,709,918.29	512.98
Pacific Mills			
Pepperell Manufacturing Co.	0.01	43,270,134.78	4,327.01
Piedmont Cotton Mills, Inc.	0.57	3,127,370.60	17,826.01
Quaker Meadow Mills, Inc.	0.13	575,945.38	748.73
Rex Mills, Inc.	0.65	4,322,809.06	28,098.26
1365 Robinson Mills, Inc.	0.18	751,305.01	1,351.81
A. M. Smyre Manufacturing Co.	0.96	2,708,120.31	25,997.95
Springs Cotton Mills	0.04	54,606,359.45	21,842.54
J. P. Stevens & Co., Inc.	0.02	117,899,507.55	23,579.90
Stowe Spinning Co.	0.29	1,774,295.00	5,145.46
Stowe Thread Co.	0.96	1,044,847.59	10,001.74
Textiles, Inc.	0.66	11,544,825.13	76,195.85
Thomaston Cotton Mills.	0.08	18,511,650.85	14,809.32
Tolar, Hart & Holt Mills, Inc.	0.16	788,736.12	1,261.98
Trenton Cotton Mills	0.81	935,334.80	7,576.21
U. S. Rubber Company, Textile Div.	0.06	19,363,254.65	11,617.95
Waverly Mills, Inc.	0.03	4,235,542.02	1,270.66
Weldon Mills, Inc.	0.57	759,644.48	4,329.97
Wellington Mills			
West Point Manufacturing Co.	0.20	36,504,859.18	73,009.72
Riegel Textile Corp.	0.09	39,547,642.81	35,592.88
Lanett Bleachery & Dye Works	0.00	7,066,362.12	
			$774,483.24

NOTE: In the Covington Mills case, Covington Mills filed a yellow affidavit, Fulton Bag & Cotton Mills filed

white and pink affidavits, Jordan Mills filed green and yellow affidavits, Mary-Leila Cotton Mills, Inc. filed a yellow affidavit, Moultrié Cotton Mills green and yellow affidavits, and Union Mfg. Co. a yellow affidavit.]

(Filed March 7, 1955)

WHITE AFFIDAVIT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 614-53

ALABAMA MILLS, INC., *et al.*, *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

I hold the position of President with Alabama Mills, Inc., which is one of the plaintiffs in the above-entitled action, and as such I am authorized and qualified to make this affidavit.

The Company named a bove, with which I am connected as stated above, is engaged in the manufacture and sale of textile products such as are included within the definition set forth in the Secretary of Labor's minimum wage determination for the textile industry, dated January 15, 1953.

This Company at various times since the enactment of the Walsh-Healey Public Contracts Act, has, under and subject to that Act, manufactured textile products, such as are referred to in the preceding paragraph, for the fulfillment of contracts let by the United States Government. The Company's profits on such work have been substantially in excess of $3,000.00.

As I am informed and believe, the monetary amount of the contracts for textile products let by the United States Government in the two years preceding the issuance of the aforesaid minimum wage determination was substantially in excess of a billion dollars. As I am informed and believe, the United States Government will continue to let contracts in large amounts for textile products, and this Company desires to continue to have the opportunity of manufacturing for the fulfillment of such contracts.

I am informed and believe, however, that if the aforesaid minimum wage determination is held valid and effective, then it will not be permissible for a manufacturer, either as a direct contractor with the Government or as a "substitute" manufacturer, to manufacture for the fulfillment of a Government contract for textile products, such as are included within the definition of the aforesaid minimum wage determination, unless such manufacturer complies with the terms of the said minimum wage determination.

This Company has some employees who do not receive the minimum wage specified in the aforesaid determination. In order to comply with the terms of the said determination, it would be necessary for the Company to increase the wages of such employees to the minimum prescribed in the said determination. Thereupon, as a matter of practical manufacturing operation, it would also become necessary for the Company to increase correspondingly the wages of substantially all its production and maintenance employees, in order to maintain the differentials existing between the various classifications of the Company's production and maintenance employees. The cost to this Company of such increases would amount to many thou-

sands of dollars per year and specifically, the cost of such increases would amount to more than $3,000.00 per year.

PAUL A. REDMOND
President

Subscribed and sworn to before me,
this the 13 day of January, 1955.

GLADYS ALVERSON
Notary Public.
County of Jefferson
State of Alabama
My commission expires: Feb. 14, 1956

(Filed March 7, 1955)

GREEN AFFIDAVIT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 614-53

ALABAMA MILLS, INC., *et al.*, *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

I hold the position of Vice President with Arkansas Cotton Mills, Inc., which is one of the plaintiffs in the above-entitled action, and as such I am authorized and qualified to make this affidavit.

The Company named above, with which I am connected as stated above, is engaged in the manufacture and sale of textile products such as are included within the definition set forth in the Secretary of Labor's minimum wage determination for the textile industry, dated January 15, 1953.

As I am informed and believe, the monetary amount of the contracts for textile products let by the United States Government in the two years preceding the issuance of the aforesaid minimum wage determination was substantially in excess of a billion dollars. As I am informed and believe, the United States Government will continue to let contracts in large amounts for textile products. The opportunity of manufacturing for the fulfillment of such contracts has heretofore been open and available to the Company and the Company desires to continue to have such opportunity open and available to it.

I am informed and believe, however, that if the aforesaid minimum wage determination is held valid and effective, then it will not be permissible for a manufacturer, either as a direct contractor with the Government or as a "substitute" manufacturer, to manufacture for the fulfillment of a Government contract for textile products, such as are included within the definition of the aforesaid minimum wage determination, unless such manufacturer complies with the terms of the said minimum wage determination.

This Company has some employees who do not receive the minimum wage specified in the aforesaid determination. In order to comply with the terms of the said determination, it would be necessary for the Company to increase the wages of such employees to the minimum prescribed in the said determination. Thereupon, as a matter of practical manufacturing operation, it would also become necessary for the Company to increase correspondingly the wages of substantially all its production and maintenance employees, in order to maintain the differentials existing between the various classifications of the Company's production and maintenance employees. The cost to this Company of such increases would amount to many thousands

of dollars per year and, specifically, the cost of such increases would amount to more than $3,000.00 per year.

SAMUEL Y. AUSTIN, JR.

Subscribed and sworn to before me,
this the 17 day of January, 1955.

GRAYSON E. NESI
Notary Public.
City of Waynesboro
State of Virginia

My commission expires: April 16, 1956

(Filed March 7, 1955)

PINK AFFIDAVIT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 614-53

ALABAMA MILLS, INC., *et al.*, *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

I hold the position of President with Alabama Mills, Inc., which is one of the plaintiffs in the above entitled action, and as such I am authorized and qualified to make this affidavit.

The Company named above, with which I am connected as stated above, is engaged in the manufacture and sale of textile products such as are included within the definition set forth in the Secretary of Labor's minimum wage determination for the textile industry, dated January 15, 1953.

This Company also at various times purchases from

other manufacturers textile products such as are referred to in the preceding paragraph.

As I am informed and believe, if the aforesaid minimum wage determination is held valid and effective, a result therefrom will be that the wage costs of many manufacturers, such as this Company buys textile products from, will be increased and the selling prices of such manufacturers will consequently also be increased. As I am informed and believe, the resulting increased cost to this Company in its purchase of textile products from such other manufacturers will be substantial and will amount to more than $3,000.00.

PAUL A. REDMOND
President

Subscribed and sworn to before me,
this the 13 day of January, 1955.

GLADYS ALVERSON
Notary Public.
County of Jefferson
State of Alabama

My commission expires: Feb. 14, 1956

(Filed March 7, 1955)

YELLOW AFFIDAVIT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 614-53

ALABAMA MILLS, INC., *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant.*

Affidavit

I, the undersigned, being duly sworn, do hereby make affidavit as follows:

I hold the position of President with Alabama Mills, Inc., which is one of the plaintiffs in the above-entitled action.

and as such I am authorized and qualified to make this affidavit.

The Company named above, with which I am connected as stated above, is engaged in the manufacture and sale of textile products such as are included within the definition set forth in the Secretary of Labor's minimum wage determination for the textile industry, dated January 15, 1953.

As I am informed and believe, if the aforesaid minimum wage determination is held valid and effective, a result therefrom will be that many manufacturers in the textile industry, in order to comply with the terms of the said minimum wage determination, will raise their wages and they will thereby tend to draw labor away from other manufacturers in the textile industry; and thus will be brought about a general state of increased competition for labor among manufacturers in the textile industry. As I am informed and believe, the increase in the costs of this Company resulting from this increase in competition for labor will be substantial and will amount to more than $3,000.00.

PAUL A. REDMOND
President

Subscribed and sworn to before me,
this the 13 day of January, 1955

GLADYS ALVERSON
Notary Public.
County of Jefferson
State of Alabama
My commission expires: Feb. 14, 1956

[NOTE: It is stipulated by and between counsel for the respective parties in these appeals that affidavits in substantially or identically the same language as the white, green, pink and yellow affidavits above quoted were executed by officers of the respective plaintiff corporations as listed above and were filed in support of their motion for

summary judgment. It is further stipulated that all figures on tables 2, 3, and 4 attached to defendant's motion for summary judgment and on plaintiffs' extension of table 6 attached to their motion for summary judgment are supported by plaintiffs' answer to defendant's interrogatories.]

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779 (Filed March 7, 1955)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 259-53

COVINGTON MILLS, *et al.*, *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Civil Action No. 614-53

ALABAMA MILLS, INC., *et al.*, *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Response of Textile Workers Union of America, Intervening Defendant, to Defendant Mitchell's Motion to Dismiss and for Summary Judgment

Textile Workers Union of America, intervening defendant herein, in response to defendant Mitchell's Motion to Dismiss and for Summary Judgment, hereby adopts and joins in, as if fully set forth herein, such portion of the motion as moves for summary judgment against the plaintiffs herein, and relies, in support thereof, upon the points and authorities set forth on pp. 39-124 of the "Brief in

Support of Defendant's Motion to Dismiss and for Summary Judgment".

ARTHUR J. GOLDBERG

DAVID E. FELLER
1001 Connecticut Avenue N. W.
Washington 6, D. C.

BENJAMIN WYLE
99 University Place
New York, N. Y.

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918 (Filed March 30, 1955)

Motion of Defendants National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company for Summary Judgment

Now, come the defendants National Association of Cotton manufacturers, Berkshire Fine Spinning Associates, Inc., (now named Berkshire Hathaway Inc.), Fitchburg Yarn Company and Hathaway Manufacturing Company, (now named Cove Street Corporation) and upon all the pleadings, the record of the administrative proceedings, the answers to interrogatories and the affidavits, all filed herein, move for summary judgment in favor of all the defendants on the ground that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law.

A memorandum of points and authorities in support of this motion is filed herewith.

WILKINSON, BOYDEN, CRAGUN & BARKER
By:
JOHN W. CRAGUN
744 Jackson Place, N. W.
Washington 6, D. C.

ROPES, GRAY, BEST, COOLIDGE & RUGG
By:
WARREN F. FABB
50 Federal Street
Boston 10, Mass.
Attorneys for National Association of Cotton Manufacturers, et al.

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927 (Filed April 8, 1955)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 259-53

Civil Action No. 614-53

COVINGTON MILLS, *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant.*

CERTIFIED RECORD OF OFFICIAL COURT REPORTER

Proceedings before Judge Alexander Holtzoff
April 4, 1955

Ruling of the Court

THE COURT: This case comes before the Court on cross motion for summary judgment. The action is brought for a declaratory judgment to adjudicate an order by the Sec-

retary of Labor to be invalid as in contravention of the statute pursuant to which it was promulgated.

928 The order in question fixed a minimum wage for persons employed in certain branches of the textile industry in connection with Government contracts. This was done pursuant to the Walsh-Healey Public Contracts Act.

The prevailing wage as determined by the order in question, promulgated on December 5, 1952, was to be the same throughout the United States.

The Walsh-Healey Act, pursuant to which this order was promulgated, 41 U. S. Code, Section 35, relates to Government contracts for the manufacture or furnishing of materials, supplies, articles and equipment in any amount exceeding $10,000.

One of the provisions of the Act is that there shall be included a representation and stipulation in the contract that all persons employed by the contractor in its performance will be paid not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract.

It is contended by the plaintiffs that under this provision the Secretary of Labor is without power to fix a single prevailing minimum wage for a particular industry on a nation wide basis.

To determine whether this objection is sound it is necessary to analyze the pertinent phraseology of the Act.

The Secretary of Labor is directed to determine the prevailing minimum wages for persons employed on similar work, or, persons employed in the particular or similar industries, or, persons employed in groups of industries.

929 In other words, he may act under any one of these three provisions. These provisions are followed by

the phraseology, "currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract."

It is contended by the defendants that the words "currently operating in the locality" are limited only to the last of the three alternatives, namely, persons employed in similar groups of industries.

On the other hand, the plaintiffs claim, contrary to the contention of the Secretary, that those words relate back to all of the three clauses.

There is some ambiguity in the statute. It is difficult to construe it according to strict grammatical requirements. The words "currently operating" seem inapplicable to the noun "work" or to the noun "industries". It is, perhaps, an unfortunate choice of words, but it seems to the Court that the phrase "currently operating" may not be construed as being limited solely to the last of the alternatives but relates back to each of them, namely, persons employed on similar work currently operating in the locality, or, persons employed in the particular or similar industries currently operating in the locality, or, persons employed in similar groups of industries operating in the locality.

This is the interpretation which the Court is of the opinion should be accorded to those words.

In this connection, the Court wishes to call attention to the fact that when the construction of this provision was first raised in litigation in *Lukens Steel Company, et al.* vs. *Perkins, et al.*, 107 F. 2d 627, the point now made by
930 counsel for the Secretary of Labor was not advanced, but it seemed to be assumed that the words "currently operating in the locality" were applicable to and limited each of the three alternatives.

Apparently the present construction sought to be applied by counsel for the Secretary of Labor is more or less of an afterthought.

Since the words "currently operating in the locality" applies to each of the three alternatives the next question

to be determined is whether the entire United States of America can be considered as a single locality in the discretion of the Secretary.

To be sure, the word "locality" is an indefinite term. It may mean a single community. It may mean a county. It may mean a region.

A considerable degree of discretion is vested in the Secretary to determine what shall constitute a "locality" for any particular purpose. So long as the construction placed by the Secretary is reasonable, the Court may not set it aside.

May it be said, within reason, that the entire United States of America may be regarded as a single "locality"?

It seems to the Court that to attach this interpretation to this term would be to place a tortured interpretation and attach a distorted meaning to a single English word.

Such a type of interpretation and construction of words was satirized by a great English satirist in the well known book "Through The Looking Glass". This book records a dialogue between Alice and Humpty Dumpty and says:

"'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to
331 mean—neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.'

'The question is,' said Humpty Dumpty, 'which is to be master—that's all.'"

The Court is not going to place its seal of approval upon that type of construction of plain English words.

The Court is of the opinion that under no circumstances is it reasonable to construe the word "locality" as applied to the entire United States of America and calling the entire country a single "locality".

The Court is especially impelled to this conclusion by the opinion of the Court of Appeals for the District of

Columbia Circuit in *Lukens Steel Company, et al.* vs *Perkins, et al.*, 107 F. 2d 627.

The case involved the validity of an order under this statute which fixed wages in the steel industry at a single figure for an area of about fourteen states and the District of Columbia and referred to them as a "locality".

In an opinion written by Mr. Justice Justin Miller, in which Mr. Justice Vinson, then a member of that court, concurred, it was very cogently and persuasively held that the word "locality" may not be used to describe a broad area consisting of fourteen states and the District of Columbia.

On this point the court made the following observations at Page 630:

"It is true that the word 'locality' is one of somewhat indefinite meaning. Still, its indefiniteness has certain well recognized limits in common meaning and usage, which exclude and forbid the interpretation placed upon the word by the appellees in their determination."

And again the court stated:

"In ordinary and common usage 'locality' is synonymous in meaning with such words as 'place, vicinity, 932 neighborhood' and 'community'. These words, also, are too indefinite to be used for purposes of exact measurement in terms of acres or square miles. But neither they nor 'locality' itself, in any case, connote large geographical areas, with widely diverse interests, such as the fourteen states and the District of Columbia, grouped in the protested determination."

A fortiori, if fourteen states is too large an area to be deemed a single locality it necessarily follows that the United States of America is much too large an area to be so considered.

In that case Mr. Justice Edgerton dissented. He did not disagree with the interpretation by the majority of the word "locality", but reached the conclusion that the plaintiffs had no standing to sue and for that reason and that

reason alone felt that the bill of complaint should be dismissed.

The Supreme Court reversed the determination of the Court of Appeals, 310 U.S. 106. The Supreme Court, however, did not discuss the views of the majority of the Court of appeals as to what is meant by "locality" but merely held that the complaint should be dismissed on the ground that the plaintiffs had no standing to sue.

This procedural obstacle was later overcome by the so-called "Fulbright Amendment" which permits judicial review of the determinations of the Secretary of Labor under the Walsh-Healey Act pursuant to the provisions of the Administrative Procedure Act.

933 The Court is impressed with arguments made by counsel as to the administrative difficulty that would be created if the Secretary of Labor were not to be permitted to make n[illegible] on wide determinations under the Walsh-Healey Act.

The Court is further impressed with the argument that it is desirable from a social and economic standpoint in some instances to fix the rate of prevailing wages on a nation wide basis.

The Court expresses no opinion on these points because they are not for the judiciary to determine. Those arguments should be addressed to the Congress because they relate to policy and expediency and not to the interpretation and the meaning of what the Congress has already enacted.

Accordingly, the Court will hold that for the reasons stated the order of the Secretary of Labor here involved is invalid as in contravention of the statute, and will deny defendants' motion for summary judgment and grant the plaintiffs' motion for the same relief.

You may submit an order.

925 (Filed April 7, 1955)

Summary Judgment

These causes were heard on consolidated cross-motions for summary judgment filed by the defendant, by the intervening defendants, and by the plaintiffs, and the Court having considered the motions, the pleadings, the answers to interrogatories, the plaintiffs' affidavits, the stipulations and admissions of counsel and the record of the administrative proceeding referred to in the pleadings and filed in this cause, and having found it unnecessary to rule on defendant's motion to dismiss as to 144 plaintiffs, it is this 7 day of April, 1955,

ADJUDGED and ORDERED as follows:

1. That the motions for summary judgment of the defendant and intervening defendants be and they hereby are denied, and the motion for summary judgment of the plaintiffs be and it is hereby granted.

2. That the minimum wage determination issued by the Secretary of Labor on January 15, 1953, for persons employed in the manufacturing or furnishing of products of the cotton, silk and synthetic textile branch of the textile industry under contracts subject to the Walsh-Healey Public Contracts Act, be and it is hereby declared to be unlawful and invalid as in contravention of the statute under which it purported to have been issued, that said minimum wage determination be and it is hereby set aside, as to the plaintiffs herein and that the defendant Secretary of Labor, his agents, representatives, and successors in office,

926 be and they are hereby permanently restrained and

enjoined from putting said minimum wage determination into effect as to any of the plaintiffs herein.

This judgment is entered without costs.

/s/ ALEXANDER HOLTZOFF
Judge

SEEN:

/s/ EDWARD H. HICKEY
/s/ DAVID E. FELLER
/s/ JOHN W. CRAGUN

---

924 (Filed April 7, 1955)

Order

Upon consideration of the motions of the defendant, James P. Mitchell, Secretary of Labor, and the intervening defendants, for a stay of the order for injunction contained in paragraph 2 of the summary judgment entered April 7, 1955, and counsel for the parties having been heard, it is by the Court this 7 day of April, 1955,

ORDERED: That the motions of the defendant and intervening defendants for a stay pending appeal are hereby denied: *Provided*, That during the period of 30 days from and after the date of entry of summary judgment, April 7, 1955, any plaintiff entering into any contract for Government work shall file bond with the Clerk of this Court in accordance with paragraph 3 of the preliminary injunctions entered in these causes on February 19 and February 20, 1953.

/s/ ALEXANDER HOLTZOFF
Judge

[Note: Notices of appeal were filed by James P. Mitchell, Secretary of Labor, on April 18, 1955 and by all other appellants on April 20, 1955.]

(Filed May 14, 1956)

Motion of Plaintiffs for Ruling on Defendant's Motion to Dismiss and for Judgment in Accordance with Certified Copy of Opinion of Court of Appeals

Now Come the plaintiffs in the above-entitled consolidated cases and respectfully show to the Court:

Upon appeal by the defendant from the judgment of this Court to the United States Court of Appeals for the District of Columbia Circuit, the Court of Appeals rendered judgment remanding the cases to this Court with instruction to this Court to rule on the motion to dismiss, which had been filed by the defendant in this Court, and with instruction that as to any plaintiffs not dismissed under said motion, judgment be entered for the defendant;

The plaintiffs thereupon filed petition for writ of certiorari in the Supreme Court of the United States, asking the Supreme Court to review the judgment of the Court of Appeals, but the Supreme Court refused to grant certiorari for the reason, as the plaintiffs believe, that the Supreme Court did not consider that there has as yet been a final and complete judgment in the cases;

Wherefore, the plaintiffs respectfully pray this Court to pass upon the motion to dismiss heretofore filed by the defendant and to render a final judgment herein, to the end that the plaintiffs may then petition the Supreme Court to review these cases upon such final judgment.

Filed May 29, 1956

Response of Defendant to Plaintiffs' Motion for Ruling and for Judgment

Comes now the defendant James P. Mitchell, Secretary of Labor, and in response to the motion of the plaintiffs for a ruling by this Court on defendant's motion to dismiss and for judgment in accordance with the opinion of

the Court of Appeals respectfully shows this Court as follows:

As to that portion of plaintiffs' motion which prays for a ruling on defendant's motion to dismiss, defendant hereby withdraws his motion.

Defendant interposes no objection to the plaintiffs' prayer that this Court render final judgment herein.

Filed June 13, 1956

Judgment

Upon consideration of the certified copy of the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit, filed in this cause on May 14, 1956, reversing the summary judgment entered by this Court on April 7, 1955, and remanding the cause for proceedings in accordance with said opinion, and upon consideration of the motion of plaintiffs for ruling on defendant's motion to dismiss and for judgment in accordance with certified copy of opinion of the Court of Appeals, and the response of defendant Secretary of Labor withdrawing said motion to dismiss, it is this 13 day of June, 1956,

ADJUDGED, ORDERED and DECREED as follows:

1. That the summary judgment of this Court entered April 7, 1955, be and the same is hereby vacated and set aside.

2. That the motion for summary judgment filed by the plaintiffs be and it is hereby denied.

3. That the motions for summary judgment of the defendant and intervening defendants be and they hereby are granted, and the complaint be and it is hereby dismissed.

4. That the plaintiffs pay the costs of these proceedings to be taxed by the Clerk and that defendant and intervening defendants have execution therefor.

5. That jurisdiction of this cause is retained for such other and further proceedings as may be proper.

/s/ ALEXANDER HOLTZOFF
Judge

[Note: Notice of appeal was filed by Alabama Mills, Inc., et al. on August 9, 1956]

JUL 24 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 310

ALABAMA MILLS, INC., ET AL., *Petitioners*

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

LLEWELLYN C. THOMAS
725 Fifteenth Street, Northwest
Washington, D. C.

WHITEFORD S. BLAKENEY
Johnston Building
Charlotte, North Carolina

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.

ALABAMA MILLS, INC., ET AL., *Petitioners*

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioners, Alabama Mills, Inc., American & Efird Mills, Inc., Arkwright Mills, Balston Yarn Mills, Inc., Caldwell Cotton Mills Co., Carlton Yarn Mills, Inc., Carolina Mills, Inc., Carolinian Mills, Inc., Chesnee Mills, Clifton Manufacturing Co., Coats & Clark, Inc., The Dunson Mills, Eastman Cotton Mills, Fairforest Company, Gastonia Combed Yarn Corp., Gem Yarn Mills Co., Globe Mills Co., Graniteville Company, Harden Spinning Co., Henry River Mills, Inc., Imperial Yarn Mills, Inc., Irene Mills, Jefferson

Mills, Inc., Jewel Cotton Mills, Inc., Lanett Bleachery & Dye Works, Micolas Cotton Mills, Mills Mill, Monroe Mills Co., Mooresville Mills, National Yarn Mills, Inc., Naumkeag Steam Cotton Co., Opp Cotton Mills, Inc., Park Yarn Mills Co., Peerless Spinning Corp., Pepperell Manufacturing Co., Piedmont Cotton Mills, Riegel Textile Corp., A. M. Smyre Manufacturing Co., Spartan Mills, J. P. Stevens & Co., Inc., Stowe Spinning Co., Superior Yarn Mills, Inc., Textiles Incorporated, Thomaston Cotton Mills, Threads, Inc., Trenton Cotton Mills, United Spinners Corp., U. S. Rubber Co., Weldon Mills, Inc., Wellington Mills, West Point Manufacturing Co., and Worth Spinning Co., respectfully pray that a writ of certiorari be issued to the United States Court of Appeals for the District of Columbia Circuit, to the end that this Court may review a judgment which the said Court of Appeals rendered on April 26, 1957, in the above entitled cause, designated in said Court of Appeals as case No. 13,597.

OPINIONS OF THE COURTS BELOW AND OF THE SECRETARY OF LABOR

The opinion of the Court of Appeals is reported at 244 Fed. 2d 21 and appears hereinafter as Appendix A.

Opinions rendered by the District Court, upon motion for preliminary injunction (unreported) and upon the original motions for summary judgment (reported at 129 Fed. Supp. 740), appear hereinafter as Appendix B.

The opinions of the Court of Appeals on the former appeal, reversing the original judgment of the District Court and remanding the cause for further proceedings (reported at 229 Fed. 2d 506) appear hereinafter as Appendix C.

The opinions and decision of the Secretary of Labor (reported in 17 Fed. Reg. 11197, and 18 Fed. Reg. 471) appear hereinafter in Appendix D.

The judgment of the District Court, entered June 13, 1956, and the judgment of affirmance in the Court of Appeals appear hereinafter in Appendix E.

JURISDICTION

The judgment of the Court of Appeals, which Petitioners seek to have this Court review, was rendered on April 26, 1957. Transcript of Record, p. 315.

Jurisdiction in this Court to review the judgment of the Court of Appeals, through the issuance of a writ of certiorari, is established by Title 28, U. S. Code, Section 1254.

QUESTIONS PRESENTED

1. Does the Secretary of Labor have authority, under Section 1 of the Walsh-Healey Public Contracts Act of 1936 (41 U. S. C. §35(b)) to determine and prescribe, for all work on Government contracts in a given industry, a single, uniform and Nation-wide minimum wage, in the face of the statutory language which provides for a determination of "the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating *in the locality in which the materials, supplies articles or equipment are to be manufactured or furnished* . . . "? (emphasis supplied)

2. Does the Secretary of Labor have authority, under Section 1 of the Walsh-Healey Public Contracts Act of 1936 (41 U.S.C. § 35(b)), to determine and pre-

scribe a single, uniform and Nation-wide minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act, where it is undisputed that minimum wages widely vary in such industry, and in the face of the statutory language which provides for a determination of "the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating *in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished . . .*"? (emphasis supplied)

STATUTES INVOLVED

Section 1 of the Public Contracts Act of 1936, generally known as the "Walsh-Healey Act," 49 Stat. 2036, 41 U.S.C. § 35(b):

> "In any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:
>
> * * *
>
> "(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, with-

out subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;"

Section 10 of the Public Contracts Act of 1936, adopted by amendment on June 30, 1952, generally known as the "Fulbright Amendment", 66 Stat. 308, 41 U.S.C. § 43a:

"Sec. 10. (a) Notwithstanding any provision of section 4 of the Administrative Procedure Act, such Act shall be applicable in the administration of sections 1 to 5 and 7 to 9 of this Act.

"(b) All wage determinations under section 1(b) of this Act shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made, in the manner provided in section 10 of the Administrative Procedure Act by any person adversely affected or aggrieved thereby, who shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

"(c) Notwithstanding the inclusion of any stipulations required by any provision of this Act in any contract subject to this Act, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms

'locality', 'regular dealer', 'manufacturer' and 'open market'."

Section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U.S.C. § 1009:

"Sec. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

"(a) Right of review.

Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) Form and venue of action.

The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

"(c) Reviewable acts.

Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection

whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

"(d) Interim relief.

Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

"(e) Scope of review.

So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency

hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

STATEMENT OF THE CASE

This is a civil action for review of a minimum wage determination under the above quoted "Fulbright Amendment" to the Walsh-Healey Public Contracts Act. For a full understanding of the nature of the proceeding, reference to the statute and its history is essential.

Under the above quoted section 1(b) of the Walsh Healey Act, adopted in 1936, contracts with the United States or its agencies, for the manufacture or furnishing of materials in any amount exceeding $10,000, must include a stipulation that all persons employed by the contractor in the manufacture or furnishing of the materials will be paid "not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;". The *locality* of manufacture or furnishing is thus made an integral part of the standard of prevailing minimum wage to be determined by the Secretary.

Until 1952, there was no requirement in the statute for a hearing or any other formal proceeding for "de-

termination" of minimum wages by the Secretary of Labor. The procedural safeguards of section 4 of the Administrative Procedure Act (5 U.S.C. § 1003), adopted in 1946, were specifically inapplicable to "any matter relating . . . to public . . . contracts." Wage determinations were held to be immune from judicial review in *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940). The action of the Secretary of Labor in making wage determinations was, during this period, subject only to disciplines and procedures imposed within the Executive Department. It was not a matter which could be controlled at the suit of any private party, as to whom the power of the Secretary was absolute.

In 1952, Congress provided for both procedure and review. On June 30, 1952, the Walsh-Healey Act was amended by the addition of a new section 10 (66 Stat. 308), quoted in full above. By subsection (a) all of the procedures and safeguards of the Administrative Procedure Act (5 U.S.C. 1001-1011) were made applicable in the administration of the Walsh-Healey Act. By subsection (b) "all wage determinations" were required to be made "on the record after opportunity for a hearing" and were made subject to review under section 10 of the Administrative Procedure Act (5 U.S.C. § 1009), also above quoted in full. This section provides in paragraph (b) for review of agency action in suits for declaratory judgment or injunction. Under paragraph (e) the reviewing Court shall hold unlawful and set aside agency action, findings, and conclusions found to be in excess of statutory jurisdiction, authority or limitations.

The new section 10 of the Walsh-Healey Act further provided that judicial review of a wage determination

could be had by any person adversely affected or aggrieved thereby, "who shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable."

With this amendment, the Walsh-Healey Act became something new and quite different from the statute of only internal concern to the Executive Department, construed in 1940 in *Perkins* v. *Lukens Steel Co.*, *supra*.

On July 26, 1952, less than a month after enactment of the Fulbright Amendment, the Secretary of Labor gave public notice of a hearing on prevailing minimum wages in the textile industry (17 Fed. Reg. 687), and a hearing was held on September 3, 4 and 5, 1952. See post, Appendix D, pp. 24a-25a. On December 15, 1952, the Secretary issued a "Notice of Proposed Amendment to the Determination of the Prevailing Minimum Wage for the Textile Industry", in which he discussed the "locality" limitation of his authority and concluded that he was not prevented from establishing a nationwide minimum wage for the textile industry. See post, Appendix D, pp. 32a-37a.

Exceptions were filed and overruled, and with a minor modification, not here material, the Secretary made his order, providing that:

> "(1) The Minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act

shall be $1.00 an hour arrived at either on a time or piece-rate basis."

This wage determination was dated January 15, 1953, effective February 21, 1953. See post, Appendix D, pp. 57a-62a.

The Secretary made no effort to determine the prevailing minimum wage in any "locality" of manufacture, having taken the view that the statute did not prevent his adopting the entire United States as the area for a uniform prevailing minimum wage.

This civil action was commenced on February 11, 1953, in the United States District Court for the District of Columbia, by seventy textile manufacturing companies, all of whom were in the industry to which the wage determination was applicable, as provided by the Fulbright Amendment. The complaint recited the wage determination and challenged its validity on a number of grounds, principally however on the ground that the Secretary of Labor had disregarded the statutory limitation on his authority with respect to localities (86-93).[1]

After a full hearing on February 16 and 17, 1953, the District Court on February 20th made findings of fact and conclusions of law (125-126), and entered a stay and preliminary injunction against the wage determination (127-8),[2] the District Court having "very

[1] References hereinafter are to pages of the Joint Appendix, copies of which are submitted with this petition, unless otherwise noted specifically.

[2] Although the joint appendix shows a caption for the case of *Covington Mills* v. *Durkin* (125), the instant case was consolidated in the District Court with that civil action and identical findings, conclusions and temporary injunction were entered in both cases (128).

grave doubts that the aforesaid amended wage determination was arrived at agreeably to the requirement of the statute." See post, Appendix B, pp. 2a-4a.

Pursuant to an order of the District Court (94-95), one hundred and thirty additional plaintiffs were added (99-101). Thereafter, during the course of the proceedings in the District Court, the complaint was dismissed and the injunction dissolved as to forty-eight plaintiffs, largely through voluntary action by these plaintiffs. (106-107) One hundred and fifty-two plaintiffs continued the action.[3]

After extensive discovery through interrogatories, the Secretary of Labor conceded that fourteen of the plaintiffs had a standing to sue, but challenged the standing of all of the others on various grounds (239-246), without in any way questioning the fact that they were in the industry to which the wage determination applied, which is the criterion for standing to sue established by the Fulbright Amendment. The Secretary filed a motion to dismiss the action as to all those whose standing was challenged and for summary judgment upholding the wage determination as to the fourteen or any others whose standing might be upheld (239-240). Plaintiffs filed a cross motion for summary judgment (247).

The District Court granted summary judgment for plaintiffs and declared the minimum wage determination "to be unlawful and invalid as in contravention of

[3] The disparity between the numbers appearing above and in the record (or in the concurring opinion in the Court of Appeals) is explained by the fact that six plaintiffs in the Covington Mills case were then before the court and are not involved in the Alabama Mills case, which alone is the subject of this petition.

the statute under which it purported to have been issued" (275).

The opinion of the District Court (Post, Appendix B, pp. 4a-8a) was that "locality" phrase of the statute limited the power of the Secretary of Labor in making his wage determinations, and that the country as a whole could not be treated as one single "locality". Since some of the plaintiffs were conceded to have standing to bring the suit under the Fulbright Amendment, the District Court set aside the wage determination, and declined to pass on the standing of those whose right to appear in the action had been challenged.

On appeal, the Court of Appeals for the District of Columbia Circuit reversed, with dissent, the majority holding being that the Secretary of Labor was not limited to any geographical area less than the nation in extent (Post, Appendix C, pp. 9a-15a), thus in effect reading out of the statute the locality provision. The Court of Appeals also held that the District Court had erred in not passing on the standing to sue of those plaintiffs, whose position in court had been challenged. The cause was remanded with instructions to the District Court to rule on the motion to dismiss filed by the Secretary "unless the government withdraws it or the plaintiffs concerned consent to it." (Post, Appendix C, p. 15a)

Rehearing was thereafter denied by the Court of Appeals sitting in banc, with two judges dissenting, and certiorari was denied by this Court. *Covington Mills, v. Mitchell*, 350 U.S. 1002.

At the time of the previous application for certiorari, the opinion and judgment of the Court of Appeals had left open for further proceedings in the District Court the important question of the standing to sue of many

of the plaintiffs, and the petition was evidently premature. *Hamilton-Brown Shoe Co.* vs. *Wolf Bros & Co.*, 240 U.S. 251, 258; ROBERTSON & KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, section 308;[4] STERN & GRESSMAN, SUPREME COURT PRACTICE, 2d Ed., P. 130.

Thereafter, the cause was remanded to the District Court. Plaintiffs filed a motion for a ruling on the standing to sue of each of their number pursuant to the appellate mandate. (277) The Secretary of Labor then withdrew his motion to dismiss (277-8), thus conceding that all plaintiffs had standing in the civil action to challenge the wage determination. Thereupon the District Court entered a judgment in favor of the Secretary of Labor upholding his wage determination, pursuant to the Opinion of the Court of Appeals. (Post, Appendix E, pp. 63a-64a)

This judgment, disposing of all matters left open by the Court of Appeals as to the proceedings for determination of the validity of the Secretary's action, was then appealed and affirmed, again with dissent. (Post,

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[4] ". . . Power exists in the Supreme Court to issue the writ whether the judgment or decree of the Circuit Court of Appeals is or is not a final disposition of the controversy. But the Court has repeatedly said (especially in its earlier decisions) that 'except in extraordinary cases, the writ is not issued until final decree,' and has warned that the circumstance that the decision of the Circuit Court of Appeals is not a final one is 'a fact that of itself alone furnished sufficient ground for the denial of the application.' It has pointed out that on certiorari to review a final decree of a Circuit Court of Appeals it can reach back to correct errors occurring in the interlocutory proceedings, and that neither the failure of parties to apply for certiorari to review an interlocutory ruling nor the denial by the Court of an application made at that stage affects the right to issue the writ to review the final decision of the Court below, nor the scope of review on such writ."

Appendix A, p. 1a and Appendix E, p. 65a) On this second appeal, the Court of Appeals declined to decide the case without briefs or argument and declined to hear the case en banc. Order entered January 8, 1957, Transcript of Record, p. 280. Later, on a motion to advance the cause for hearing, the Court in its order declined to hear before the panel any argument on matters decided by the prior appeal, "without prejudice to the filing of a petition for original hearing en banc within ten days since if any argument is desired on such a question it should be before the full court." Order entered March 11, 1957, Transcript of Record, p. 299. Pursuant to this suggestion, a petition for hearing en banc was filed but was denied. Order entered March 29, 1957, Transcript of Record, p. 312. The case was thereupon submitted and the judgment of the District Court affirmed per curiam on April 26, 1957.

REASONS FOR ALLOWANCE OF WRIT

This case presents "an important question of federal law which has not been, but should be, settled by this court."[5] The regulation of wages and hours of employees is accomplished by the United States Government through two major channels: by the control of contracts for the manufacture or furnishing of materials to the government under the Walsh-Healey Act,[6] and by exercise of the interstate commerce power under the Fair Labor Standards Act.[7] The two methods are not mutually exclusive and may apply to the same operation. *Powell* v. *U.S. Cartridge Co.*, 339 U.S. 497, 515-520.

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[5] Rule of 19 of this Court.

[6] 49 Stat. 2036, 41 U.S.C. § 35 et seq.

[7] 52 Stat. 1060, 29 U.S.C. § 201 et seq.

With the vast extent of government operations and procurement of materials, a great volume of commercial and industrial activity is subject to the controls of the Walsh-Healey Act. The correct interpretation of the wage provision in Section 1(b) of this Act quoted above, is of incalculable importance to the nation at large.

The section, when read in its natural, unstrained, plain, and obvious meaning, creates a standard of minimum wages measured by the prevailing wages "in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract." "Locality" permeates and controls the meaning of the entire section and the quoted phrase would be entirely superfluous, if Congress had intended to prescribe a single standard of "prevailing" minimum wages for industries across the country, without reference to local standards.

In *Powell* v. *U.S. Cartridge Co.*, supra, this court said in outlining the statute:

> "The Walsh-Healey Act was adopted about one year after the National Industrial Recovery Act had been declared unconstitutional. *Schechter Corp.* v. *United States*, 295 U.S. 495. Seeking then to regulate wages and hours of employees, the Walsh-Healey Act kept within a narrow field of assured constitutionality. It prescribed that, in Government contracts for the manufacture or furnishing of materials, supplies, articles and equipment in any amount exceeding $10,000, the contractor pay its employees not less than the minimum wages determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work in the locality. * * * (339 U.S. at 513)

The Secretary of Labor and the Court of Appeals were clearly in error when they held that minimum wages "for similar work" or for a particular industry need not be related to the prevailing standard in a local community. (Post, Appendix D and Appendix C).

The legislative history hereinafter described shows that Congress intended the Act to be construed with reference to local communities of the country.

The administrative "practice" of the Secretary of Labor in ignoring the "locality" limitation, relied on by the Court of Appeals majority, far from being an administrative interpretation of an ambiguous statute, entitled to weight, is rather an evasion of both the spirit and the letter of the law. "Where a statutory body has assumed a power plainly not granted, no amount of such interpretation is binding upon the Courts." *Texas and Pacific Railway Co.* v. *United States*, 289 U.S. 627, 640 (1933).

Nor has there been Congressional acquiescence in the Secretary's view. On the contrary, when Congress in 1952 passed the Fulbright Amendment and made the Secretary subject to judicial review, rather than spell out his duty by detailed definition, the Senate Committee said:[8]

> "Your committee considered, and rejected, a proposal to change the word 'locality,' in section 1 (b) of the act, to 'city, town, village, or other civil subdivision' (similar to the language in the Davis-Bacon Act), which was subsequently modified to read 'local labor market area,' in order to include workers in a normal commuting area surrounding

[8] S. Rep. No. 1399, 82d Cong., 2d Sess. 31 (1952).

> the place of manufacture, and avoid the artificial boundaries of a city, town, or county. It is the intent of your committee that its action in rejecting this proposal be without prejudice to future deliberations of the courts concerning the meaning of 'locality.'"

This can hardly be called acquiescence or acceptance by Congress of the Secretary's views. By contrast, in the case cited by the Court of Appeals majority, *Alstate Construction Co.* v. *Durkin*, 345 U.S. 13, 17, Congress had *specifically* approved administrative regulations interpreting the statute.

The fallacies of the majority opinion in the Court of Appeals, and the reasons for the allowance of the writ are set forth with the utmost clarity and conviction in the dissenting opinion of Judge George Washington on the first appeal, to which he adhered in dissenting from the judgment now submitted for review by this Court (See Appendix C, pp. 19a-21a, and Appendix A.)

Previous Applications for Review

A determination of minimum wages, under the Walsh-Healey Act, in the steel industry, for a large region extending through fourteen states, was reviewed by the District of Columbia Court of Appeals in *Lukens Steel Co.* v. *Perkins*, 107 Fed. 2d 627 (1939). The opinion made an exhaustive study of the legislative history and of the meaning of "locality" and came to the conclusion that the Secretary of Labor had exceeded his power in stretching the word to include so large an area. As the dissenting opinion states in this case (Appendix C, post, p. 19a):

> "The reasoning of the opinion seems to me unanswerable. And the legislative history there recited shows with complete clarity what Congress intended: that bidders for Government contracts 'shall pay the prevailing wages in the community where the work is performed.'"

Certiorari was granted (309 U.S. 643), in view of "the manifestly far-reaching importance of the questions thus raised" by the Court of Appeals decision (310 U.S. at 125).

As above stated, the Walsh-Healey Act required no special procedure to be followed by the Secretary and provided for no review at the suit of private parties. The Secretary's function was merely executive, in aid of the procurement policies of the government, invading no rights of private industry. This Court therefore reversed the Court of Appeals on the ground that the plaintiffs in that case had no standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940).

The Fulbright Amendment modified the law by requiring special procedure in arriving at wage determinations, by allowing judicial review, and by defining those who have the right to seek such review. In view of this legislative change in the doctrine of *Perkins* v. *Lukens Steel Co., supra*, it is of importance that any pending issues, as to the standing of parties under the amendment, be fully adjudicated by the courts below, before presenting the case for review by this Court.

Certiorari was denied on the earlier appeal in this case, at a time when the judgment of the Court of Appeals had remanded the cause to the District Court for a decision on the standing of nearly all of the plaintiffs, and when no such decision had yet been made.

350 U.S. 1002, sub. nom. *Covington Mills* v. *Mitchell. In Allendale Co.* v. *Mitchell,* No. 755 Oct. Term 1955, 351 U.S. 909, a petition for certiorari was likewise denied when presented at a premature stage. In a civil action for review of a nation-wide wage determination for the Woolen and Worsted Industry, decision had been made by the District Court on the standing to sue of the plaintiffs and an appeal had been taken. The petition for certiorari was filed, however, *before judgment in the Court of Appeals,* and this Court did not have the benefit of a ruling in the Court of Appeals on the "standing to sue" issue raised by the Secretary of Labor.

Respondents will doubtless say that the questions presented in this case have been previously disposed of in the denial of certiorari in those two instances. Petitioners apprehend, however, that both petitions were made at premature postures of the respective cases.[9] Upon remand in this case, Respondent Secretary of Labor disposed of the issue on standing to sue by withdrawing the motion to dismiss (217-218). Judgment on the merits was then entered as to all plaintiffs and has been affirmed by the Court of Appeals (Appendix A, post).

The cause is therefore now in a posture where this court may review it on the issue which was not reached in *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113. Petitioners respectfully urge the granting of certiorari, in view of the equally "far-reaching importance" of the questions raised.

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[9] See authorities cited above at p. 14 and in footnote 4.

This Cause Is Not Moot as to Petitioners

The minimum wage prescribed by the Secretary of Labor for the textile industry under the Walsh-Healey Act was $1 per hour (Appendix D, post). Effective March 1, 1956, Congress amended the Fair Labor Standards Act so as to increase the national minimum wage from 75 cents to the same amount of $1 per hour. 69 Stat. 711. While the Respondents have not asserted, and the Secretary of Labor has even disclaimed any intention of asserting, that this cause is thereby rendered moot, it seems appropriate to eliminate any possible implication of mootness.

During the pendency of the injunctions entered by the District Court, and prior to March 1, 1956, employees of some of the plaintiffs in the case received wages less than $1 per hour in the performance of contracts subject to the Walsh-Healey Act. In view of the injunctions, only the earlier minimum of 87 cents per hour was enforceable. Through voluntary disclosure, investigations by government agents in the field, and conferences of attorneys representing the Secretary and the plaintiffs respectively, the amounts involved have been reviewed and will be in the aggregate about $420,000. See affidavit in Transcript of Record, pp. 293-295. Against each and every one of the Petitioners named in this petition, the Secretary asserts a claim on behalf of employees, and the question of liability thereon may depend on the outcome of this petition.[10] All of those plaintiffs against which the

[10] Pleadings are yet to be filed for adjudication of Petitioners' liability on the injunction bonds or otherwise, but the Secretary's attorneys have expressed their intention of asserting the claims, and Petitioners' attorneys their intention of defending on whatever grounds may be available, including the defense that the imposition of liability would be inequitable under all of the circumstances of the case. Bonds on file aggregate over $500,000.

Secretary does not, as the result of the disclosures and investigations, assert any such claim have been omitted as petitioners herein.

The cause is therefore not moot, and the final adjudication of the merits as to the extent of the Secretary's power in making wage determinations in this case is readily seen to be a true "case or controversy" within the meaning of Article III, section 2, of the Constitution.

Legislative History

The Walsh-Healey Act grew out of two bills, S. 3055, 74th Cong., 1st Sess. and H.R. 11554, 74th Cong., 2nd Sess., on which, "extensive hearings" were held by the House Judiciary Committee. These bills gave the Secretary of Labor very wide discretion to prescribe uniform minimum wages over the country substantially as he might see fit.

They evoked voluminous and vigorous protest, that vested with authority to require uniform industry-wide minimum wage levels in broad areas, or indeed over the whole Nation, the Secretary would deprive many small manufacturers outside the large industrial centers of all opportunity to obtain Government contracts and would thereby increase the centralization of industry and the monopolization of Government business by the large corporations. It was stressed that there was great need to "encourage" small manufacturing establishments throughout the country; that "should wage differentials be entirely excluded . . . thousands of small manufacturers would be eliminated in bidding"; and that it was inevitable and indeed salutary that there should be variation in wage scales "in different parts

of the country and in communities of different size, with varying conditions.[11]

The result was that neither of these bills was reported out by the House Committee. Instead, an entirely new bill was written, which the Secretary has aptly described as a "compromise" of "the different views expressed during the hearings." This new bill[12] was adopted after debate by the house, and by the Senate without debate, and became known as the Walsh-Healey Act.

The sponsors of this bill, in presenting it to Congress, were emphatic and unanimous:[13]

> Mr. Greenwood: "Mr. Speaker, this resolution from the Committee on Rules provides for consideration of what was known as the Walsh-Healey Bill, which Bill regulates specifications in connection with the purchase of supplies by the Government of the United States. It provides that no less than *the prevailing minimum wage* shall be paid to workers *in the Community where the supplies are manufactured or where the work is performed.* . . . The Government in buying its supplies should lead the way . . . and should provide a *minimum wage according to the scale prevailing in the community.* . . . This Bill provides that they (contractors for Government work) shall pay *the*

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[11] H. R. hearings on S. 3055, 74th Cong., 1st Sess., pp. 58, 63, 87, 88, 91, 94, 95, 393, 397, 440.

H. R. hearings on H. R. 11554, 74th Cong., 2nd Sess., pp. 237, 239, 245, 249, 250, 251, 391, 302-304, 309, 313, 393, 402-412, 422-436, 440.

[12] Identified as an amendment of and substitute for S. 3055.

[13] Unless otherwise indicated, italics, for emphasis, are petitioners'.

prevailing wages in the community where the work is performed. . . ."[14]

Mr. Healey: "This Bill does not set the standand for minimum wages by reference to the codes that obtained under N. R. A., but definitely sets it as the prevailing minimum wage for similar work or in the industries operating *in the locality in which the contract is to be performed.*"[15]

Mr. Citron: "The Bill merely provides that the Government shall have the right to refuse the bids on all purchases over $10,000 to those . . . who pay less than the prevailing rate of wages *in their community. . . .*"[16]

Mr. Ayers: "This Bill also provides for prevailing wages *in the locality where the work is done.*"[17]

Mr. Mischener: "It permits the Secretary of Labor, Madam Perkins, to determine what the prevailing minimum wages are *in the locality in which the materials are to be manufactured or furnished.*"[18]

Mr. Sirovich: "The Walsh-Healey Bill make it mandatory for all agencies that deal with the United States Government to accept the prevailing wages *in the respective localities* in which the materials, supplies, articles or equipment are to be manufactured or furnished under said contract[19] . . . The minimum wage law in this Bill can fix wages *depending upon what the local com-*

[14] 80 Cong. Rec. 9992-9993.

[15] 80 Cong. Rec. 10002.

[16] 80 Cong. Rec. 10008.

[17] 80 Cong. Rec. 9286.

[18] 80 Cong. Rec. 10006.

[19] 80 Cong. Rec. 10012.

munity in that particular section where the contract is taken pays for similar work."[20]

Congressman Healey, upon being asked whether "the real purpose of the Bill" was to empower the Secretary of Labor to set wages "throughout the country", exclaimed "Oh, no".[21] And Senator Walsh, in offering an amendment to the Act a year after its enactment, said:

> "It is evident that the legislative intent of the present minimum wage section was to direct the administrative authority to give effect to geographic differentials."[22]

From all of which it is abundantly clear that Congress specifically understood and emphatically intended that minimum wage determinations under the Statute which they were enacting should be made by localities and not on any uniform nation-wide basis.

The Limited Purpose of the Walsh-Healey Act

In the present case, not even purporting to determine and prescribe for the various localities of the textile industry "what the prevailing minimum wages are in the locality" or "the scale prevailing in the community"—the Secretary of Labor has instead declared and decreed one uniform and Nation-wide minimum wage for the entire industry.[23] In this he flatly disobeyed the "locality" restriction which Congress advisedly,

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[20] 80 Cong. Rec. 10015.

[21] Hearings on H. R. 11554, 74th Cong., 2nd Sess., pp. 124-125.

[22] 80 Cong. Rec. 3503-3504.

[23] It is undisputed that minimum wages in the textile industry are in fact not uniform but are characterized by a variety of geographic differentials. (160-162, 211-214)

deliberately and pointedly wrote into the Act. And the opinion of the majority below overrides the language of the Statute and totally ignores its legislative history to sustain the Secretary's action.

The reasoning of the opinion is that if manufacturers are allowed to perform Government contracts at the wages which the Secretary finds to be prevailing in their respective localities, then some Government business will go to manufacturers in the lower wage-paying localities and the objective of eliminating such manufacturers from Government business will not have been fully accomplished. "Only an industry-wide minimum", says the majority, can fully accomplish this purpose.

But the majority assumes the whole case when it assumes that in the Walsh-Healey Act Congress intended *fully* to accomplish such purpose. The vital point of the case is that the Walsh-Healey Act *does not go the whole way* toward requiring uniformity of wages among those who compete for Government business.

Both the language and the history of the Act set forth a middle-ground position in which Congress went part of the way, but not all the way, toward requiring uniform wages—not creating authority to compel all manufacturers in an industry to conform to a single standard, and not leaving them free to pay wages as low as they might see fit either—but creating instead authority to compel them, if they desire Government business, to come up to and maintain the prevailing wage levels of their respective localities.

It is of course true that in enacting this legislation Congress was concerned with the problem of Govern-

ment business going to "firms that pay sub-standard wages".[24] But the question at the heart of the case is: —"sub-standard" by what standard? Both the language and the history of the Act answer this question clearly:—that a manufacturer may not have Government business if his wages are sub-standard in relation to the wage level which prevails in his locality.[25]

In his dissenting opinion Judge Washington penetrated to this, the crux of the matter, and pointed out that the Walsh-Healey Act has "a restricted objective: that of preventing contractors from cutting wages below prevailing community levels".

Neither the language nor the history of the Act permit the assumption that the Act intends to judge a manufacturer's fitness for Government business by comparing his wages with those of other manufacturers in his industry throughout the whole United States—no matter that this would indeed be the method which would go furthest toward eliminating "low-wage concerns". As Judge Washington concisely emphasizes: "Our function is to determine what Congress thought desirable, rather than to give expression to our own views on social legislation".

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[24] Appendix D, post, p. 33a.

[25] The opinion of the majority suggests that this becomes reductio ad absurdum when it is considered that there may be no other manufacturer of the same type in the locality. The answer in turn to this is that the Secretary has a discretion as to what he will define as a "locality"—though certainly he may not term the entire United States one "locality", as he has undertaken to do in the present case. Moreover, the Statute expressly authorizes him in determining a minimum wage standard to look to "similar industries or groups of industries" in the locality.

The Fair Labor Standards Act[26] is apt example that when Congress desires to set up uniform and Nation-wide wage standards, it is not lacking either in authority or ability to say so. As Judge Washington observes: "Surely it is better to reach decisions of that sort through congressional debate and action, rather than through strained administrative and judicial interpretation of a statute passed years ago for a different and more limited purpose".

It is respectfully submitted that this is a case in which the majority below simply overrode the language of the Statute in order to implement what it conceived to be "the policy of the legislation as a whole"—*notwithstanding that the "locality" wording of the Statute contradicts such a policy and notwithstanding that those who wrote the Statute and procured its enactment expressly and positively declared that such was not its policy.*

As is aptly stated in the concurring opinion of Justice Frankfurter in *Youngstown Sheet and Tube Company, et al.* v. *Sawyer:*

> "It is quite impossible, however, when Congress did specifically address itself to a problem . . . to find secreted in the interstices of legislation the very grant of power which Congress consciously withheld. To find authority so explicitly withheld is not merely to disregard in a particular instance the clear will of Congress. It is to disrespect the whole legislative process and the constitutional division of authority between (the executive) and Congress".
>
> *Youngstown Sheet and Tube Company* vs. *Sawyer*, 343 U.S. 579, 609.

[26] 52 Stat. 1060, 29 U.S.C. § 201 et seq.

At one point the opinion of the majority seems to suggest that, by the language of the Statute itself, the "locality" limitation does not apply to all methods of wage determination provided in the Act. The opinion takes no note of the fact that this theory, as long ago as the *Lukens* case, was abandoned by the Secretary of Labor as not comporting "with the statutory language";[27] that the Secretary, as recently as 1952 when the Fulbright Amendment was under consideration, held no such view of the Act;[28] and that certainly, as the legislative history above referred to positively shows, Congress was innocent of any such concept and expressly intended that all wage determinations under the Act should be subject to the "locality" limitation.

Nevertheless, says the majority's opinion, the Secretaries of Labor, purporting to act under this Statute, have "during many years" prescribed uniform minimum wages on a Nation-wide basis for various industries and since this "practice" has been long continued without repudiation, it should not now be interfered with.

As to this it is first to be noted that if a "consistent" administrative practice has been consistently wrong, then "no amount" of it "is binding upon the Courts".[29] Next it must be remembered that prior to the instant case the one and only Court which ever examined the Secretary's practice on the merits, namely the Court

[27] Brief for Secretary of Labor, filed in this Court in *Perkins, et al* v. *Lukens Steel Company, et al*, p. 131.

[28] Hearings on S. 2594, 82nd Cong., 2nd Sess., p. 2475, et seq. 2481 et. seq.

[29] *Texas and Pacific Railway Company* v. *United States*, 289 U.S. 627, 640.

of Appeals for the District of Columbia Circuit, did repudiate it"[30] and that then the doors of the Courts were closed to all review of the matter and have only swung open again with the present case.

To quote again from Judge Washington's opinion: "As far as the argument based on continued administrative interpretation is concerned, I would suppose that we were not entitled to give much weight to action which was until a short time ago completely immune to judicial review".

But, says the opinion of the majority, the Secretary's practice was "called to the attention of committees of Congress", yet Congress wrote no new legislation to require him to change such practice. The committee records vividly show, however, the amazement with which members of Congress, as late as 1950 and 1952, learned that the Secretary was determining minimum wages under the Act on a Nation-wide and not on a locality basis.[31]

And in 1952 Congress did amend the Act specifically to provide that this "practice" which had been immune to court review should instead be subject to court review. In this, Congress was certainly not approving the Secretary's actions. Indeed the Secretary has officially conceded that Congress has "not" seen fit to "affirm the past practices" of the Secretaries

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[30] It will be recalled that the Secretary was repudiated in treating a group of States as a "locality", whereas he has here treated the whole United States as such.

[31] Hearings before subcommittee of House Committee on appropriations. H. R. 6008, 81st Cong., 1st Sess., pp. 69-71. Hearings on S-2594, 82nd Cong., 2nd Sess., pp. 2481-2482, 2706, 2708.

of Labor under the Walsh-Healey Act, but has "left the matter to resolution of the courts".[32]

The Statute Is Clear and Unambiguous

Section 1 (b) of the Walsh-Healey Act is so clear in meaning that he who runs may read it with full understanding. It speaks, not in terms of an entire industry extending over a large area of states or over the whole country, but in terms of a *contract clause*, from the point of view of an accepted contractor, who has a particular place of business where he will manufacture or furnish materials for government purchase: It specifies prevailing minimum wages as determined for "persons employed on similar work . . . in the locality . . ." (cf. *Powell* v. *U.S. Cartridge Co., supra*) or "for persons employed . . . in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished *under said contract*" (emphasis supplied).

This clear meaning is consistent with the legislative history, and is not inconsistent with the statements of the broad policy of the Walsh-Healey Act quoted by the Court of Appeals majority from *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 128 (1940) and *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507 (1942). A differential based on the standard of the local community does not compel the government to deal with "sweat shops." The more recent opinion in *Powell* v. *U.S. Cartridge Co.*, 339 U.S. 497, 515 (1950), states the pol-

[32] Decision by James P. Mitchell, Secretary of Labor—In the Matter of Determination of Prevailing Minimum Wages for the Woolen and Worsted Industry. January 27, 1954. 19 Fed. Reg. 535.

icy of the Act in appropriate perspective, as quoted above.

Nor is the statute absurd, or impossible of administration on a local basis, as asserted in the arguments of Respondents and in the opinion of the Court of Appeals majority. The Bacon-Davis Act[33] has since 1935 required the Secretary of Labor to determine the minimum wages on government construction contracts by local, geographical units described as "city, town, village, or other civil subdivision." Section 6 (c) of the National Industrial Recovery Act[34] gave the President authority to establish codes of maximum hours and minimum wages where agreements could not be obtained and provided that "The President may differentiate according to experience and skill of employees affected and *according to the locality of employment*" (emphasis supplied). With this history of the local standards of minimum wage, it can hardly be said either that Congress did not mean what it said, or that the administration of the Act as written is impossible or even too difficult.

Petitioners respectfully submit that the opinion of the Court of Appeals in *Lukens Steel Co.* v. *Perkins*, 107 F. 2d 627, although reversed on other grounds in this Court, 310 U.S. 113, and the very able dissenting opinion of Judge Washington in this case (Appendix C, post, pp. 19a-21a) dispose of all arguments for the Secretary of Labor's assertion of power to extend a single wage standard across the nation under the Walsh-Healey Act. These opinions demonstrate clearly that his power is limited to localities of lesser

[33] 49 Stat. 1011, 40 U.S.C. § 276a.

[34] June 16, 1933, 48 Stat. 195, 199.

geographical extent. The decision of the Court of Appeals in this case is erroneous and should be reviewed by this Court and reversed.

CONCLUSION

For the reasons and upon the grounds herein set forth, the petitioners pray that a writ of certiorari be granted.

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13597

ALABAMA MILLS, INC., *et al.*, APPELLANTS

v.

JAMES P. MITCHELL, Secretary of Labor, *et al.*,
APPELLEES

Appeal from the United States District Court
for the District of Columbia

Decided April 26, 1957

Before EDGERTON, *Chief Judge*, and WASHINGTON and DANAHER, *Circuit Judges*.

PER CURIAM: The judgment is affirmed, Judge Washington dissenting. Each member of the court adheres to the views he expressed in *Mitchell* v. *Covington Mills, Inc.*, 97 U.S. App. D.C. 165, 229 F. 2d 506.

Affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 259-53

COVINGTON MILLS, ET AL., *Plaintiffs*

vs.

JAMES P. MITCHELL SECRETARY OF LABOR, *Defendant*

Civil Action No. 614-53

ALABAMA MILLS, ET AL., *Plaintiffs*

vs.

JAMES P. MITCHELL SECRETARY OF LABOR, *Defendant*

Upon Motions For Preliminary Injunction

SCHWEINHAUT, District Judge.

Gentlemen, I am persuaded that I must stay the effective date of this order. Having read this file completely—perhaps not as studiously as more time would permit, but certainly completely yesterday and last night—and having heard very able arguments and very helpful arguments today, there is very grave doubt in my mind about whether or not the Secretary arrived at his order pursuant to law.

It is my impression, shall I put it, at this time, that he did not; because it seems to me "locality" clearly does not mean the United States of America. The efforts to come up with something that would be workable and meaningful all were directed in the Congress to something less than the entire United States. Therefore, as I say, I have very grave doubts and lean to the opinion that it was not legally ar-

rived at, in the sense that it was not arrived at agreeably to the requirement of the statute.

Then we must ask whether or not, that being so, these plaintiffs have any right to complain about it. I think they clearly do; and I think they do for two reasons: One is, I think they are aggrieved; at least, can be. They have a right, since they are in this industry to seek, even if they had not done so before, Government contracts; and it seems to me they have a right to seek them on the basis of regulations legally arrived at, and not to have the burden put upon them of contriving and fashioning a bid onerous to them, as they think, which they believe is based upon a concept that is illegal in its nature.

Also, I think that if they are right about it, and that this should turn out to be held by the Court to have been illegally arrived at, then they can indeed suffer irreparable injury, for what I think are the rather obvious reasons expressed here today.

Moreover, I think they have a standing to sue for the simple reason that the statute said they may have it. There never was a statute more clearly designed to overturn a decision of a court than this one. I speak, of course, of the Fulbright Amendment. There is no doubt about it, that the Lukens case, in 310 U. S., would have kept these plaintiffs out of court. There is equally no doubt in my mind, in this preliminary stage of this case, that Senator Fulbright and the Congress, which went along with him, intended to cure that and to open the door to plaintiffs such as these to the courts to obtain the very kind of review they are seeking here.

Now, I do not pass upon the merits, and the opinions I express in that regard, insofar as they may concern the merits, are very definitely curbstone. This case will not come before me, since I am in the Motions Court, and I do now advance the case for final hearing; since it is a matter that should not be left hanging in a state of hiatus.

I believe my duty at this point is absolutely clear: and that is to stay the effective date of this order.

Upon Motions for Summary Judgment

HOLTZOFF, District Judge.

This case comes before the Court on cross motions for summary judgment. The action is brought for a declaratory judgment to adjudicate an order by the Secretary of Labor to be invalid as in contravention of the statute pursuant to which it was promulgated.

The order in question fixed a minimum wage for persons employed in certain branches of the textile industry in connection with Government contracts. This was done pursuant to the Walsh-Healey Public Contracts Act. The prevailing wage as determined by the order in question promulgated on December 5, 1952, was to be the same throughout the United States.

The Walsh-Healey Act, pursuant to which this order was promulgated, 41 U.S.C.A. § 35 et seq. relates to Government contracts for the manufacture or furnishing of materials, supplies, articles and equipment in any amount exceeding $10,000. One of the provisions of the Act is that there shall be included in each contract a representation and stipulation that all persons employed by the contractor in its performance will be paid not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract.

It is contended by the Plaintiffs that under this provision the Secretary of Labor is without power to fix a single prevailing minimum wage for a particular industry on a nation-

wide basis. To determine whether this objection is sound it is necessary to analyze the pertinent phraseology of the Act. The Secretary of Labor is directed to determine the prevailing minimum wages for persons employed on similar work, or persons employed in the particular or similar industries, or persons employed in groups of industries. In other words, he may act under any one of these three provisions. These provisions are followed by the clause, "currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract."

It is contended by the defendants that the words "currently operating in the locality" are limited only to the last of the three alternatives, namely, persons employed in similar groups of industries. On the other hand, the plaintiffs claim, contrary to the contention of the Secretary, that those words relate back to all of the three clauses. There is some ambiguity in the statute. It is difficult to construe it according to strict grammatical requirements. The words "currently operating" seem inapplicable to the noun "work" or to the noun "industries." It is, perhaps, an unfortunate choice of words, but it seems to the Court that the phrase "currently operating" may not be construed as being limited solely to the last of the alternatives but relates back to each of them, namely, persons employed on similar work currently operating in the locality, or, persons employed in the particular or similar industries currently operating in the locality, or persons employed in similar groups of industries operating in the locality. This is the interpretation, in the opinion of this Court, which should be accorded to those words.

In this connection, the Court wishes to call attention to the fact that when the construction of this provision was first raised in litigation in Lukens Steel Co. v. Perkins, 70 App. D.C. 354, 107 F. 2d 627, 630, the point now made by counsel for the Secretary of Labor was not advanced, but

it seemed to be assumed that the words "'currently operating in the locality'" were applicable to and limited each of the three alternatives. Apparently the present construction sought to be applied by counsel for the Secretary of Labor is more or less of an afterthought.

Since the phrase "currently operating in the locality" applies to each of the three alternatives, the next question to be determined is whether the entire United States of America can be considered as a single locality in the discretion of the Secretary. To be sure, the word, "locality" is an indefinite term. It may mean a single community. It may mean a county. It may mean a region. A considerable degree of discretion is vested in the Secretary to determine what shall constitute a "locality" for any particular purpose. So long as the construction placed by the Secretary is reasonable, the Court may not set it aside. May it be said, within reason, that the entire United States of America may be regarded as a single "locality"? It seems to the Court that to attach this interpretation to this term would be to place a tortured interpretation and attach a distorted meaning to a simple English word.

Such a type of interpretation and construction of words was satirized by a great English satirist in the well-known book "Through the Looking Glass." This book records a dialogue between Alice and Humpty Dumpty and says:

> "'When I use a word', Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean—neither more or less'.
>
> "'The question is', said Alice, 'whether you can make words mean so many different things.'
>
> "'The question is', said Humpty Dumpty, 'which is to be master—that's all'".

The Court is not going to place its seal of approval upon that type of construction of plain English words. The

Court is of the opinion that under no circumstances is it reasonable to construe the word "locality" as applicable to the entire United States of America and calling the entire country a single "locality".

The Court is especially impelled to this conclusion by the opinion of the Court of Appeals for the District of Columbia Circuit in Lukens Steel Co. v. Perkins, 70 App. D. C. 354, 107 F. 2d 627. That case involved the validity of an order under this statute, which fixed wages in the steel industry at a single figure for an area of about fourteen states and the District of Columbia and referred to them as a "locality". In an opinion written by Mr. Justice Justin Miller, in which Mr. Justice Vinson, then a member of that court, concurred, it was very cogently and persuasively held that the word "locality" may not be used to describe a broad area consisting of fourteen states and the District of Columbia. On this point the court made the following observations, 107 F. 2d at pages 630, 631:

> "It is true that the word *locality* is one of somewhat indefinite meaning. Still, its indefiniteness has certain well recognized limits in common meaning and usage, which exclude and forbid the interpretation placed upon the word by the appellees in their determination".

And again the court stated:

> "In ordinary and common usage *locality* is synonymous in meaning with such words as *place, vicinity, neighborhood and community.* These words, also, are too indefinite to be used for purposes of exact measurement in terms of acres or square miles. But neither they nor *locality* itself, in any case, connote large geographical areas, with widely diverse interests, such as the fourteen states and the District of Columbia, grouped in the protested determination". (Emphasis original).

A fortiori, if fourteen states is too large an area to be deemed a single locality, it necessarily follows that the

United States of America is much too large an area to be so considered.

In that case Mr. Justice Edgerton dissented. He did not disagree with the interpretation by the majority of the word "locality", but reached the conclusion that the plaintiffs had no standing to sue and for that reason and that reason alone felt that the bill of complaint should be dismissed. The Supreme Court reversed the determination of the Court of Appeals, 310 U. S. 113, 60 S. Ct. 869, 84 L. Ed. 1108. The Supreme Court, however, did not discuss the views of the majority of the Court of Appeals as to what is meant by "locality", but merely held that the complaint should be dismissed on the ground that the plaintiffs had no standing to sue. This procedural obstacle was later overcome by the so-called "Fulbright Amendment", which permits judicial review of the determinations of the Secretary of Labor under the Walsh-Healey Act pursuant to the provisions of the Administrative Procedure Act, 5 U. S. C. A. § 1001 et seq.[1]

The Court is impressed with arguments made by counsel as to the administrative difficulty that would be created if the Secretary of Labor were not to be permitted to make nation wide determinations under the Walsh-Healey Act. The Court is further impressed with the argument that it is desirable, from a social and economic standpoint in some instances to fix the rate of prevailing wages on a nation wide basis. The Court expresses no opinion on these points because they are not for the judiciary to determine. These arguments should be addressed to the Congress, because they relate to policy and expediency and not to the interpretation and the meaning of what the Congress has already enacted.

Accordingly, the Court will hold that for the reasons stated the order of the Secretary of Labor here involved is invalid as in contravention of the statute, and will deny defendants' motion for summary judgment and grant the plaintiffs' cross motion for the same relief.

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[1] 41 U. S. C. A. § 43a, added June 30, 1952, 66 Stat. 308.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12650

JAMES P. MITCHELL, Secretary of Labor, APPELLANT

v.

COVINGTON MILLS, INC., *et al.*, APPELLEES

No. 12651

JAMES P. MITCHELL, Secretary of Labor, APPELLANT

v.

ALABAMA MILLS, INC., *et al.*, APPELLEES

No. 12652

NATIONAL ASSOCIATION OF COTTON MANUFACTURERS, *et al.*, APPELLANTS

v.

COVINGTON MILLS, INC., *et al.*, APPELLEES

No. 12653

NATIONAL ASSOCIATION OF COTTON MANUFACTURERS, *et al.*, APPELLANTS

v.

ALABAMA MILLS, INC., *et al.*, APPELLEES

No. 12654

TEXTILE WORKERS UNION OF AMERICA, CIO,
APPELLANT

v.

COVINGTON MILLS, INC., *et al.*, APPELLEES

No. 12655

TEXTILE WORKERS UNION OF AMERICA, CIO,
APPELLANT

v.

ALABAMA MILLS, INC., *et al.*, APPELLEES

Appeals from the United States District Court
for the District of Columbia

Decided Dec. 1, 1955

Before EDGERTON, Chief Judge, and WASHINGTON and DANAHER, Circuit Judges.

EDGERTON, *Chief Judge:* The Walsh-Healey Public Contracts Act of 1936 provides that any government contract for more than $10,000 shall include a stipulation that all persons employed in manufacturing or furnishing goods under the contract will be paid "not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract; . . ." 41 U.S.C. § 35, 49 STAT. 2036, § 1.

The Secretary of Labor determined in January 1953, after extensive hearings, that the prevailing minimum wage in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry was $1.00 per hour.

Two separate groups of textile manufacturers brought separate suits against the Secretary, under § 10(b) of the Act, 41 U.S.C., § 43a(b), to set aside and enjoin his determination as illegal.[1] By permission of the District Court the Textile Workers Union of America, CIO, The National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company intervened as defendants in support of the determination. The cases were consolidated for hearing in the District Court. The court awarded summary judgment to all the plaintiffs and permanently enjoined the Secretary from putting the determination into effect as to any of them, on the ground that the Secretary's authority under the Walsh-Healey Act is limited by the word "locality" and that, therefore, he may not determine a minimum wage on an industry-wide basis. The Secretary and the intervenors appeal.

The policy and purpose of the Act are plain. By statute and regulation, government contracts must go to the lowest responsible bidder. Until the Walsh-Healey Act was passed, it followed that the government, though it urged industry to maintain adequate wage standards, was often compelled to undermine them by contracting with low wage concerns. The Walsh-Healey Act sought to support standards by withholding contracts from such concerns. "This Act's purpose was to impose obligations

[1] Before its effective date, the determination was stayed as to the plaintiffs and the Secretary was temporary enjoined from putting it into effect as to them. While that order was in force, any plaintiff who entered into a contract otherwise subject to the determination was required to post a bond to pay the prescribed wage if the determination were upheld. We entered a somewhat similar order, requiring a bond of $2,000, pending the present appeal.

upon those favored with Government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment. As stated in the Report of the House Committee on the Judiciary . . . , 'The object of the bill is to require persons having contracts with the Government to conform to certain labor conditions in the performance of the contracts and thus to eliminate the practice under which the Government is compelled to deal with sweat shops.'" *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 128. The Act's "purpose is to use the leverage of the Government's immense purchasing power to raise labor standards." *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507.

The Secretary's findings of fact make it clear that in the textile industry, unlike some industries, only an industry-wide minimum will serve this purpose, because the competition is industry-wide. The District Court's construction of the Act would make it necessary for the Secretary to fix separate minima according to the wages that prevail in each separate textile community. This would freeze the competitive advantage of concerns that operate in low-wage communities and would in effect offer a reward for moving into such communities. Obviously this would defeat the purpose of the Act. It would also make the Act nearly meaningless as applied to a large part of the textile industry; since there is frequently only one textile concern in one neighborhood and it necessarily pays the wages that prevail in its plant.

Because the Walsh-Healey Act uses the word "locality," the appellees say that the plain meaning of the Act forbids the Secretary to fix an industry-wide minimum. As to the "plain meaning" of an Act of Congress the Supreme Court has said: "When that meaning has led to absurd or futile results . . . this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely

an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words.'" *United States* v. *American Trucking Ass'ns, Inc.*, 310 U.S. 534, 543.

Moreover, it is not true that the plain meaning of the Walsh-Healey Act forbids the Secretary to fix an industry-wide minimum in this case. It is not plain that every minimum wage determination under the Act must be limited to a "locality." It is not even plain that a large group of States can never be a locality."[2] The word occurs only in the phrase "currently operating in the locality."[3] The phrase is not plainly intended to qualify any other term than "groups of industries." It may or may not be intended to qualify "the particular or similar industries." It can hardly be intended to qualify "similar work" for "work . . . currently operating in the locality" would be a strange expression. The Secretary found that a dollar an hour is the prevailing minimum on "similar work." He also found that it is the prevailing minimum in the particular industry. In our opinion these findings were fully warranted.

The Secretary's interpretation of the Act as permitting industry-wide determinations of minimum wages is not new. In this industry and many others, during many years, the Secretary has made many such determinations. See, *e.g.*, 41 C.F.R. Parts 202 *et seq.* His practice in this respect has repeatedly been called to the attention of committees of

[2] In *Lukens Steel Co.* v. *Perkins*, 70 App. D. C. 354, 107 F. 2d 627, this court expressed a different view. But the Supreme Court reversed the judgment of this court, and affirmed the judgment of the District Court dismissing the complaint, on the ground that the plaintiffs had no standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113. This of course left the opinion, as well as the judgment, of this court without value as a precedent.

[3] It has been suggested that the words "in the locality" are not necessarily tied to the words "currently operating", and that "similar work . . . in the locality" is a possible reading. But since it is by no means the only possible reading it is not the "plain meaning" of the Act.

Congress. Attempts have been made to write his interpretation expressly into the Act. Attempts have also been made to write it expressly out of the Act. Both have failed. Congress has chosen to leave the interpretation of the Act to the Secretary and the courts. As the Supreme Court said in regard to a different but somewhat related statute, the Fair Labor Standards Act, "We decline to repudiate an administrative interpretation of the Act which Congress refused to repudiate after being repeatedly urged to do so." *Alstate Construction Co.* v. *Durkin*, 345 U.S. 13, 17.

Appellees point out that "purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market" are exempt from the statutory requirement of a stipulation that employees will be paid not less than the prevailing minimum determined by the Secretary. 41 U.S.C. § 43; 49 Stat. 2039, § 9. But this exemption has nothing to do with the only matter here in issue, which is the validity of the Secretary's determination. The Secretary determined nothing with regard to the exemption. He determined that "The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis." He did not undertake to decide to what contracts the Walsh-Healey Act, and therefore the minimum wage determination, are applicable. The complaints in these suits do not ask the court to decide that question.[4]

[4] It is therefore immaterial that the Fulbright Amendment to the Walsh-Healey Act provides that review of the "applicability" of a minimum wage determination may be had by any "person adversely affected or aggrieved". 66 Stat. 308, 41 U.S.C. § 43a(b). The Fulbright Amendment also provides that "Notwithstanding the inclusion of any stipulations required by any provision of sections 35-45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the

In our opinion the plaintiffs' other objections to the Secretary's determination are likewise invalid.

The District Court thought it need not rule on a motion of the Secretary to dismiss the complaints, on jurisdictional grounds, as to 144 of the 158 plaintiffs. But the fact that some of the plaintiffs clearly have standing, under the Fulbright Amendment, to seek review of the Secretary's determination, confers no standing on others. We think the District Court should decide, in the first instance, which plaintiffs have standing. *Cf. B. F. Goodrich Co.* v. *Federal Trade Commission*, 93 U.S. App. D.C. 50, 56, 208 F. 2d 829, 834. The case is remanded with instructions to rule on the motion to dismiss, unless the government withdraws it or the plaintiffs concerned consent to it. As against plaintiffs who are not dismissed, judgment should be entered for the defendant.

Reversed and remanded.

DANAHER, *Circuit Judge*, concurring: I concur in the entire opinion by Chief Judge Edgerton.

I feel compelled to say this: were it not for *Textile Workers Union of America, CIO* v. *The Allendale Company, et. al.*,[1] I would dismiss 144 plaintiffs on the present record. Moreover, I believe the District Court should have denied intervention by defendants National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, Hathaway Manufacturing Company and the Textile Workers of America, CIO, who are now here as appellants on the side of the Secretary.

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terms 'locality', 'regular dealer', 'manufacturer', and 'open market'." 41 U.S.C. § 43a(c). That is, a contractor who has been required to include a minimum wage stipulation in a contract need not perform the stipulation if the requirement was not in accordance with law. This is irrelevant here.

[1] 96 U.S. App. D.C. 401, 226 F.2d 765, decided July 15, 1955. But see the dissenting opinions.

The Supreme Court held[2] in 1940 that determinations by the Secretary under the Walsh-Healey Act[3] as it then was written, are not judicially reviewable. The Act "was not intended to be a bestowal of litigable rights upon those desirous of selling to the Government; it is a self-imposed restraint for violation of which the Government—but not private litigants—can complain."[4] The function of the Secretary, acting in behalf of the Government, is to find the facts,[5] and make his determination which shall be conclusive upon all agencies of the United States. The Act was designed to permit the Government to supply its needs without the delays necessarily incident to judicial supervision of administrative procedure. "If the general law permits prospective bidders to challenge each wage determination of the Secretary in the courts, by a like token all employees affected could obtain judicial review."[6] We have been advised that "Courts should not, where Congress has not done so, subject purchasing agencies of the Government to the delays necessarily incident to judicial scrutiny at the instance of potential sellers, which would be contrary to traditional governmental practice and would create a new concept of judicial controversies."[7] Not only do such expressions by the Court correctly, in my opinion, reflect the understanding and purpose of the Congress, but this case illustrates peculiarly the situation which Congress sought to avoid. It is now nearly three years since the Secretary's determination was promulgated, and it is no more

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[2] Perkins v. Lukens Steel Co., 310 U.S. 113, 128 (1940).

[3] 49 STAT. 2036-2040 (1936), as amended, 41 U.S.C. §§ 35-45 (1952).

[4] *Supra* note 2, 310 U.S. at 127.

[5] § 4, 49 STAT. 2038 (1936), as amended, 41 U.S.C. § 38 (1952); (re the fact-finding function see Shannahan v. United States, 303 U.S. 596, 599 (1938)).

[6] *Supra* note 2, 310 U.S. at 131.

[7] *Id.* at 130.

nearly effective now than when it was first made. Yet 144 plaintiffs and 5 defendants as "parties" in the District Court still, because of their status as parties, respectively have rights of appeal no matter which way our order goes.[8]

It is said that these "parties" are thus able completely to frustrate the reasonable fulfillment of the Congressional objective because "rights" have been conferred upon them by the Fulbright amendment,[9] adopted in 1952. In terms it was provided that review "may be had within 90 days after such determination is made," and ten of the original plaintiffs sought review after the 90 day statutory period had expired. As to them the motion to dismiss should be granted. The Fulbright amendment further provided that review was to be had only "by any person adversely affected or aggrieved" by the determination. Only 14 plaintiffs have made a showing that the determination "results in direct and immediate injury."[10] So, I would dismiss as to 144 "plaintiffs," leaving only the 14 in the Alabama case and none in the Covington case. The named intervening appellants by the Secretary's determination have not been subjected to or threatened with any legal wrong. They have shown no independent legal right. They are not "private Attorney Generals,"[11] and the Secretary is ably represented here by the Attorney General. Even the Fulbright amendment confers no standing upon those who appear on the side of the Secretary. I believe their intervention never should have been allowed.

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[8] Cf. Fishgold v. Sullivan Corp., 328 U.S. 275 (1946); Boston Tow Boat Co. v. U. S., 321 U.S. 632, 633 (1944).

[9] 41 U.S.C. § 43(a) (1952).

[10] National Coal Ass'n v. Federal Power Commission, 89 U.S. App. D.C. 135, 138, 191 F. 2d 462, 465 (D.C. Cir. 1951).

[11] Associated Industries v. Ickes, 134 F. 2d 694, 704 (2d Cir. 1943), *order vacated*, 320 U.S. 707 (1943). The able opinion by Judge Frank treats of almost every conceivable situation except that presented on the record here.

This is not a case involving a determination of public convenience and necessity such as *National Coal Ass'n* v. *Federal Power Commission*.[12] This is not a case like *Columbia System* v. *United States*,[13] where "the regulations purport to operate to alter and affect adversely appellant's contractual rights and business relations with station owners whose applications for licenses the regulations will cause to be rejected and whose licenses the regulations may cause to be revoked." This is not a case like *Associated Industries* v. *Ickes*,[14] where by administrative order, the minimum prices at which coal could be sold were increased, thus affecting the very basis upon which transactions in the coal business could be conducted. Nor is the case like *United States Cane Sugar Refiners' Ass'n* v. *McNutt*,[15] or *Longshoremen's Union* v. *Boyd*,[16] where the suit was dismissed for want of a "case or controversy." This is a case, *sui generis*, where "Congress, as incident to its power to authorize and enforce contracts for public works, may require that they shall be carried out only in a way consistent with its views of public policy . . ."[17] No one is forced to bid for Government contracts. Not foreign to our problem are the considerations reasoned by this court in *Alabama Power Co.* v. *Ickes*.[18] I believe the Congressional interest in the attainment of the objectives of the Walsh-Healey Act and the Government's undoubted

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[12] *Supra* note 10. (Even there Judge Clark, in his dissent, argued well that the petitioners were not "parties aggrieved" within the meaning of the Natural Gas Act.)

[13] 316 U.S. 407, 422 (1942).

[14] *Supra* note 11.

[15] 138 F. 2d 116 (2d Cir. 1943) (where the petition was dismissed for lack of jurisdiction).

[16] 347 U.S. 222 (1954). (The point is certainly present here.)

[17] Ellis v. United States, 206 U.S. 246, 256 (1907).

[18] 67 App. D.C. 230, 91 F. 2d 303 (D.C. Cir. 1937), *aff'd*, 302 U.S. 464 (1948).

right to lay down the conditions upon which its own business will be conducted compel a strict construction of the Fulbright amendment. Any other view makes a shambles of the Walsh-Healey Act, for the delays and confusion occasioned by the hordes of "parties" render a determination obsolete and ineffective. Thus those who properly may be parties are those, and only those, who can show themselves by direct and immediate injury to have been adversely affected or aggrieved by the Secretary's determination.

WASHINGTON, *Circuit Judge*, dissenting: The central issue here, of course, is whether the Walsh-Healey Act was intended to establish a nation-wide wage standard for Government contractors, or a standard based on wages prevailing in the contractor's own community. To my mind the language of the statute clearly establishes the latter standard. This court so held in a case decided shortly after the passage of the Act. *Lukens Steel Co.* v. *Perkins*, 70 App. D.C. 354, 107 F. 2d 627 (1939). The opinion—an exhaustive one—was written by Associate Justice Justin Miller, and was concurred in by Associate Justice Fred M. Vinson, who had become a member of this court after serving in Congress during the very period in which the Walsh-Healey Act was passed. The reasoning of the opinion seems to me unanswerable. And the legislative history there recited shows with complete clarity what Congress intended: that bidders for Government contracts "shall pay the prevailing wages in the community where the work is performed."[1]

Our decision in *Lukens* was reversed by the Supreme Court on another ground—that the complainants lacked standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940). The obstacle has now been removed by the Fulbright Amendment, passed in 1952. 41 U.S.C. § 43a (1952).

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[1] Congressman Greenwood at 80 Cong. Rec. 9993; quoted at p. 362 of 70 App. D.C. p. 635 of 107 F. 2d, together with numerous similar statements.

Technically, in dealing with the present case, we are not "bound" by our decision in *Lukens*, even though the Supreme Court did not reach the merits of that case. But its reasoning remains sound, and has not been disturbed by anything which has happened since. As far as the argument based on continued administrative interpretation is concerned, I would suppose that we were not entitled to give much weight to action which was until a short time ago completely immune to judicial review. Nor, under the circumstances here, does congressional failure to amend an act already clear on its face seem to be in any sense declaratory of the correctness of the Secretary's interpretation. The latest pronouncement of Congress—the Fulbright Amendment—certainly makes no such declaration: its passage might suggest, indeed, that Congress was not content with the Secretary's action, and wished it to be reviewed by the courts. The relevant Committee Report specifically states that failure to amend the "locality" provision of the Act is to be without prejudice to a judicial determination of the meaning of that provision. S. Rep. No. 1599, 82d Cong., 2d Sess. 31 (1952).

It is argued that to give the "locality" provision its ordinary meaning would produce an undesirable result. But—whether or not that is so—our function is to determine what Congress thought desirable, rather than to give expression to our own views on social legislation. It is also said that the purpose of the Act would be defeated by such an interpretation. But I think the majority misconceives the purpose of the Act, as revealed in the light of conditions prevailing in 1936, when it was passed. At that time, and before, it was generally thought that the Federal Government lacked power to undertake broad regulation of wages and labor standards. Control of Government contracts was thought possible, however, and in 1931 the Bacon-Davis Act was passed, imposing certain wage regulations in the field of Government construction contracts, 46 Stat. 1494. In 1935 that A-

was substantially revised and strengthened, 49 Stat. 1011. The 1935 revision provided—in language derived from the earlier legislation—for wage determinations based on conditions prevailing in the "city, town, village, or other civil subdivision" where the contract is to be performed. In 1936 the Walsh-Healey Act was passed to cover the field of supply contracts. Here Congress used the "locality" provision we have been discussing. Obviously both acts are based on the same philosophy and point to a standard limited to a fairly small area and to a restricted objective: that of preventing contractors from cutting wages below prevailing community levels in an effort to pare costs and thus be the lowest bidder. As the legislative history shows, there was no thought of raising wages, or of eliminating regional differentials. See *Lukens* at p. 362 of 70 App. D.C., 635 of 107 F. 2d.

Later, of course, greater breadth of Federal power was recognized. The Supreme Court's decision in *National Labor Relations Board* v. *Jones & Laughlin Steel Co.*, 301 U.S. 1 (1937), opened the door to more sweeping congressional action. Problems such as that of the "runaway industry," which were not intended to be dealt with by the Walsh-Healey Act, but which may underlie the Secretary of Labor's approach to that Act, may now be dealt with by explicit Federal legislation. Congress has gone far in this direction through the Fair Labor Standards Act and its amendments. Indeed, under an amendment shortly to come into effect, the minimum F.L.S.A. wage will be raised to a dollar an hour. Public Law 381, 84th Cong., 1st Sess. § 3 (1955). That, of course, is the same as the Secretary's determination here. Surely it is better to reach decisions of that sort through congressional debate and action, rather than through strained administrative and judicial interpretation of a statute passed years ago for a different and more limited purpose.

APPENDIX D

UNITED STATES DEPARTMENT OF LABOR

Washington, D. C.

TITLE 41—PUBLIC CONTRACTS

PART 202—MINIMUM WAGE DETERMINATIONS

NOTICE OF PROPOSED AMENDMENT TO THE DETERMINATION OF THE PREVAILING MINIMUM WAGE FOR THE TEXTILE INDUSTRY

This matter is before the Department pursuant to the Act of June 30, 1936, (49 Stat. 2036; 41 U.S.C. 35) as amended by the Defense Production Act Amendments of 1952, (Sec. 310, P. L. 429, 82nd Congress), entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes," and known as the Walsh-Healy Public Contracts Act.

The Secretary of Labor, in a minimum wage determination issued pursuant to the provisions of the Walsh-Healey Public Contracts Act and made effective November 16, 1948 (13 F.R. 6683), determined the minimum wage for persons employed in the Textile Industry in the performance of contracts with agencies of the United States Government subject to the Act to be not less than 87 cents per hour. This determination also authorized employment of learners in specified occupations at rates not less than 80 cents an hour for a learning period not longer than 240 hours. This determination is currently in effect as editorially revised and published in the Federal Register on July 20, 1950 (15 F.R. 4634).

The Textile Workers Union of America, CIO, submitted a petition dated January 23, 1952, for determination of a minimum wage of $1.155 an hour in the Textile Industry with a wage escalator provision of one cent quarterly adjustment for each 1.32 rise in the Consumer's Price Index

(Old Series) beginning with February 15, 1951, and urged retention of the currently effective definition of the Industry.

The United Textile Workers Union, AFL, submitted a petition, dated March 4, 1952, for determination of a minimum wage of $1.13 an hour with an escalator clause and the other so-called fringe benefits of vacations with pay and holiday and shift premiums as provided in its collective bargaining agreements.

Representations in these petitions with respect to current wage rates provided in collective bargaining agreements and other wage data reported from time to time by textile manufacturing establishments and associations indicated that the 87-cent rate now in effect may not reflect the prevailing minimum wages in the Textile Industry. This proceeding was, therefore, initiated for the purpose of consideration of an amendment to the current determination which will reflect the minimum wages now prevailing.

An informal panel conference was held on March 4, 1952 at which representatives of the Department of Labor met with representatives of management and labor in the Textile Industry and discussed various matters concerning the Textile Industry, including questions of definition of the Industry and the obtaining of adequate wage information.

GENERAL

Notice of a hearing in this matter to be held on September 4, 1952 was published in the Federal Register on July 26, 1952 (17 F.R. 6871). Copies of the notice and a press release announcing the hearing were mailed to trade associations, unions, and to individual companies in the Industry. In addition, the press release was distributed to newspapers and trade publications.

This notice and release advised interested persons of the time and place at which they could appear and offer

testimony; (1) as to what are the prevailing minimum wages in the Textile Industry; (2) as to whether there should be included in any amended determination for this Industry provision for employment of learners, beginners and/or apprentices at subminimum rates, and if so, in what occupations, at what subminimum rates, and with what limitations, if any as to length of period and number or proportion of such subminimum rate employees; and (3) as to the propriety of the present definition of the Industry as set out in the notice of hearing. The notice stated that "The following information is particularly invited with respect to the subject matter of the testimony or statements of each witness; (1) the number of workers covered in the presentation; (2) the number and location of establishments; (3) minimum wages paid at the end of a probationary or learner period, the number of workers receiving such wages, and the occupations in which these employees are found; (4) the entrance rate for learners, beginners or probationary workers, the length of such learning or probationary period, and the number of workers paid such entrance rates; and (5) the product or products made by the establishments included." The notice further stated that "To the extent possible, data should be submitted in such a manner as to permit evaluation thereof on a plant by plant basis."

A notice of change of the hearing date and place to 10 a.m. September 3, 1952 in Conference Room A of the Departmental Auditorium in Washington, D. C. was published in the Federal Register on August 8, 1952 (17 F.R. 7255) and was given the same informal distribution to the press and interested employer and employee organizations as the original notice.

The hearing was held on September 3, 4, and 5, 1952, pursuant to the notice and the Rules of Practice for Minimum Wage Determinations under the Walsh-Healey Public Contracts Act (17 F.R. 7944). Representatives of em-

ployees and employers appeared at the hearing to present evidence and testimony, and the record was kept open for a specified period beyond the close of the hearing for receipt of additional data and briefs.

Management appearances at the hearing included representatives of the National Cotton Manufacturers Association, the American Cotton Manufacturers Institute, the Association of Cotton Textile Merchants of New York and of several textile establishments. Labor appearances included representatives of the Textile Workers Union of America (CIO) and the United Textile Workers Union (AFL).

In addition letters, statements and briefs were filed by interested parties both at the hearing and following the close of the hearing. All such material has been made part of the record herein. The hearing record was closed as of October 29, 1952.

DEFINITION

The currently effective definition proposed for adoption in the Notice of Hearing reads as follows:

(a) Definition. For the purpose of this determination the term "Textile Industry" means:

(1) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs containing any wool) from cotton, flax, jute, other vegetable fiber, silk, grass, or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (7) and (8); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber;

(2) The manufacturing of batting, wadding, or filling and processing of waste from the fibers enumerated in clause (1);

(3) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics or cords (except carpets and rugs containing any wool) from any fiber or yarn;

(4) The processing of any textile fabric, included in this definition of this industry, into any of the following products: Bags, bandages and surgical gauze, bath mats and related articles, bedspreads, blankets, diapers, dishcloths, scrubbing cloths and washcloths, sheets and pillow cases, tablecloths, luncheloths, napkins, towels, window curtains, shoelaces and similar laces;

(5) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(6) The manufacturing of cordage, rope or twine from any fiber or yarn including the manufacturing of paper yarn and twine;

(7) The manufacturing or processing of yarn (except yarn containing any carpet wool) or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (1), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

(8) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (1), with a margin of tolerance of 2 percent to meet the exigencies of manufacture;

(9) The manufacturing, dyeing, finishing or processing of rugs, or carpets from grass, paper, or from any yarn or fiber except yarn containing any wool but not including the manufacturing by hand of such products.

The definition as proposed in the Notice of Hearing is that contained in the determination now in effect for the Industry.

At the hearing there were introduced into the record letters from five concerns recommending that the proposed definition be modified to exclude "varnished fabrics" on the grounds that these products are not generally made in plants making the other products included in the definition and further that the industrial processes required and the wages paid differ from those in the Textile Industry generally. In this connection, Mr. Verl E. Roberts, Assistant Administrator of the Wage and Hour and Public Contracts Divisions, stated for the record that the Divisions have ruled that the present definition does not cover varnished cloth, artificial leather, oil cloth, window shade cloth, linoleum, felt-base floor covering, dental floss, buckram, waxed cloth, and plastic-coated cloth.

The representative of the Textile Workers Union of America argued that coating and impregnating are normal parts of the dyeing and finishing industry. However, it appears from a later statement of this representative and from the Census of Manufactures, 1947, that while dyeing and finishing plants do, to some extent, perform such coating and impregnating operations, the greater proportion of these operations are performed in plants which specialize in this field.

On the basis of the record, therefore, I find that the definition of this industry should continue to exclude such coated or impregnated textile products as varnished cloth, artificial leather, oil cloth, window shade cloth, linoleum,

felt base floor covering, dental floss, buckram, waxed cloth and plastic-coated cloth.

The National Association of Wool Manufacturers, in a letter accepted for the record argued that the definition of the industry should be modified to exclude any product presently included which contains any proportion of wool or man-made fibers (other than rayon or acetate). Moreover, the Association recommended, as it had previously at the public hearing in the Matter of the Redetermination of the Prevailing Minimum Wages in the Woolen and Worsted Industry, held on May 15, 1952, that these products, that is, products containing any portion of wool or man-made fibers (other than rayon or acetate), should be included in the definition of the Woolen and Worsted Industry. The adoption of this proposal would have the effect of removing from the definition of the Textile Industry a great variety of items made from mixtures containing minor proportions of wool or any proportion of man-made fibers (other than rayon or acetate) which are normally manufactured by firms engaged primarily in the production of cotton or synthetic rather than woolen or worsted textiles.

The present lines of demarcation between the Textile Industry, and the Woolen and Worsted Industry and the Knitting, Knitwear and Woven Underwear Industry, which would also be affected if the proposal were adopted, are based on traditional industry concepts which have been recognized by the Bureau of the Budget, the Bureau of the Census and in the administration of the Fair Labor Standards Act and the Public Contracts Act. While there is an indication of certain trends which may in time justify a reevaluation of these dividing lines, it does not appear that such shifts as have occurred would warrant a change at this time. Consequently, I find that the request of the National Association of Wool Manufacturers should be denied at this time and that the present definition should not be changed in this regard.

With the exception of the two points mentioned above the only other proposals with respect to the definition were made by the petitioners and three independent unions in the textile field all of whom recommended that the present definition of the Textile Industry be retained. The other parties present made no proposals either for or against the retention of the present definition. As indicated below, adequate wage data are available in this proceeding only for the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry and I am proposing at this time a redetermination of the prevailing minimum wage only for this branch, which is defined at the conclusion of this proposed determination.

NATURE OF AVAILABLE WAGE DATA.

As a part of its regular program of conducting wage surveys of important industries, the Bureau of Labor Statistics made a study of earnings and related wage practices in the cotton and synthetic textiles industries. These surveys which relate to a payroll period in March, 1952 covered a large number of firms and employees in the Textile Industry and constitute the primary data upon which a determination of prevailing minimum wages in this industry can be based.

The first of these surveys relates to establishments in the following categories: broad woven fabric mills primarily engaged in weaving cotton fabrics over 12 inches in width; cotton yarn mills primarily engaged in spinning, twisting, winding or spooling cotton yarn; and cotton thread mills. The second survey includes establishments in the following categories: broad woven fabric mills primarily engaged in weaving fabrics of spun or filament silk, rayon, nylon or other synthetic fabrics over 12 inches in width; yarn mills primarily engaged in manufacturing spun yarns from silk, rayon, nylon, or other synthetic staple fiber products; yarn throwing mills engaged in re-

winding, twisting, plying, and packaging of filament silk, rayon, nylon or other synthetic fibers; and thread mills manufacturing thread from silk, rayon, nylon or other synthetic fibers. In addition to workers engaged in producing these items, the surveys, cover other workers in these establishments engaged in producing fabricated textile products and in dyeing and finishing operations.

The Bureau of Labor Statistics published the results of these surveys in separate releases for cotton and for silk and synthetic textiles. Subsequently, the Bureau prepared additional tabulations at the request of the Wage and Hour and Public Contracts Division. The original releases plus these additional tabulations are contained in Government Exhibits 18 through 24. After the hearing a need arose for additional tabulations and the Bureau of Labor Statistics prepared a series of supplementary tabulations which were also based on information contained in the two surveys. These latter Bureau of Labor Statistics tabulations are hereby made a part of the record and are available to any interested party for examination and comment. For purposes of reference these tables are identified as Supplementary Government Exhibits A-1 through A-8.

The American Cotton Manufacturers Institute employed a statistical agency to conduct a mail questionnaire survey of firms manufacturing textiles and related products. However, the Institute was unwilling to present for the record more than a fragment of the tabulations which had been prepared from the survey and which the Department had been given to understand would be available. The data offered for the record include a tabulation by county of average minimum wages, weighted by number of establishments, for each county in its survey from which two or more establishments submitted replies to the questionnaire, except where such minima were identical. Subsequent to the hearing, the Institute presented a similar tabulation showing county averages weighted by number

of employees. These data include watchmen and others of the custodial group not covered by the Act. In addition, they include the earnings of workers engaged in the manufacture of products not included in the definition of the Textile Industry. Even if these limitations were not present, however, it is evident from the data that the ACMI approach would inevitably lead to illogical and inequitable variation in the determined minimum wage from one community or county to another. For example, the Institutes survey reported an average minimum wage weighted by employees for Tallapoosa County, Alabama of 101.3 cents an hour. The comparable rates for four nearby counties, three of which are contiguous and one of which is one county removed, were as follows: Chambers, 92.1 cents; Lee, 89.7 cents; Elmore, 99.7 cents; and Talladega, 102.7 cents. It is clear also that whatever separation might be made within the counties, on a community basis, or however the communities or counties were aligned, equally, disparate results would ensue.

The Textile Workers Union of America and the United Textile Workers of America submitted copies of a number of collective bargaining agreements and lists showing the names and locations of plants in the industry, the type of products manufactured, employment and minimum wages paid. These lists include both union and nonunion establishments and cover a large proportion of the Industry.

In addition, information on average hourly earnings from the Bureau of Labor Statistics, employment and production figures from the Census of Manufactures and copies of collective bargaining agreements on file with the Bureau of Labor Statistics were available to the Department.

LOCALITY

In each of the three previous wage determinations for this industry under the Public Contracts Act a single wage was recognized as the prevailing minimum wage in the industry throughout the United States. At the hearing before the Examiner in the present proceeding arguments were presented with regard to whether recognition of a single nation-wide rate for this industry would be consistent with the statutory language and intent of the Public Contracts Act. It was argued by counsel representing the ACMI and a number of other textile manufacturers that the "locality" language of section 1(b) of the Act[1] requires that minimum rates be established by small geographic areas such as communities in which textiles are produced. The ACMI suggested that in some situations a county or even groups of counties could be considered as a locality. It further suggested that the "locality" comprised of groups of counties need not be confined within state lines but might run through more than one State depending on the various factors and circumstances which might be present. In presenting these arguments no attempt was made to list or otherwise define the factors or circumstances which should be taken into account in determining the limits of such localities and, in fact, it was conceded by counsel that neither they nor the firms they were representing were prepared to offer any concrete criteria which might be applied in delineating such localities.

[1] Section 1(b) reads as follows: "That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract".

The National Association of Cotton Manufacturers and both of the unions participating in the hearing presented arguments and data in support of a single minimum wage for the Industry. A post-hearing brief filed by the NACM presented a number of arguments to show that the statutory language and the purpose and intent of the Public Contracts Act require a construction which would permit recognition of an industry-wide minimum, and that all of the factors present in the Textile Industry require that a single industry minimum be recognized in this case.

I have carefully weighed all of the arguments presented and I have considered in detail all of the voluminous data contained in the record in attempting to arrive at a proper determination of these questions. Before undertaking a discussion and analysis of the wage data the legal aspects of the arugments presented on the locality question should be dealt with.

It is abundantly evident from the legislative history of the Act that its purpose was to prevent the flow of Government business into the hands of firms that pay substandard wages and maintain low employment standards. Its purpose was, in short, to bring about a situation where employers paying fair and reasonable wages would not lose out on Government business to low-paying firms. Under the system of competitive biding adhered to by the Government, the various contracting agencies must accept the lowest responsible bid. Obviously, in an industry which utilizes standard equipment and has approximately the same raw material costs, any substantial differences in wages would be reflected in bids submitted on Government work. In recognition of this fact and in order to encourage the maintaining of fair wage standards Congress enacted the Public Contracts Act.

With this Congressional purpose in mind, the specific language of the Act must be construed. Any construction of the locality language would result in freezing the lows

and the highs in wages would certainly not carry out the purpose of the Act. In other words, if the dominant plant or plants in community A were paying substantially lower wages than plants in community B, the recognition of community A and community B as separate localities would mean that plants in A could continue to underbid plants in B and the situation would be frozen at that level.

The legislative history of the Act indicates clearly that Congress gave serious and lengthy consideration to the possible approaches to the problem of arriving at appropriate minimum wages. In recognition of the difficulties inherent in this field, Congress decided to vest in the Secretary of Labor the administrative function of carrying out the minimum wage provisions of the law and established certain criteria to guide the Secretary of Labor in such functions. The factors which have a bearing on minimum wages present such a pattern of diversity from industry to industry as to render any single formula for determining prevailing wages impractical. Consequently, Congress wisely allowed a degree of administrative discretion to be followed by the Secretary of Labor in applying the criteria laid down in the Act. The statute, accordingly, directs the Secretary of Labor to determine prevailing minimum wages in accordance with three distinct standards, namely, the prevailing minimum wages for persons employed 1) on similar work or 2) in the particular or similar industries or 3) in groups of industries currently operating in the locality in which the contract is to be performed. In the context of the Act it seems proper to conclude that the phrase "currently operating in the locality" was intended to qualify only groups of industries and does not limit "similar work" or "particular or similar industries."

It is clear, then, considering the broad administrative powers provided throughout the Act, that it was the Congressional intent to give the Secretary of Labor substan-

tial latitude in regard to determining prevailing minimum wages and to apply any one or combination of the criteria enunciated in the Act in order to properly carry out the purposes of the Act.

The evidence in the record discloses certain predominant characteristics of the Textile Industry as follows: the Industry is principally located in three sections of the country, New England, the Middle Atlantic States and the South. Competition in the Industry is nation-wide in scope and marketing of the products of the Industry is similarly on a national scale. Only in rare instances is there found a situation where a mill markets its product within a limited geographic area. Most textile producers maintain sales representatives or agents in the textile center known as Worth Street in New York City and the vast bulk of textiles are sold through such center. Producers of textiles in such widely separated areas as Maine and Alabama compete for the same business in the Worth Street market. It is not uncommon for mills in different sections of the country to perform different production operations on a given lot of textile fabric. For example, textile gray goods woven in South Carolina may be shipped to New Jersey or Rhode Island for finishing operations consisting of bleaching, dyeing, printing, etc. The goods are then sold on the New York market and may be shipped to customers in Maine, California, Florida or any other place in the United States, or elsewhere in the world.

The record shows also that Government purchases of textiles are not confined within any geographic limits. In the normal case the Government invites bids from firms located in *every textile producing area* and bids are received from mills in widely separated regions. Pursuant to a single invitation to bid, contracts for a particular item may be awarded to mills in a number of different States. In some instances various steps in the processing of textiles required under a Government contract will take

place in different States and different regions. A single firm bidding on Government contracts will frequently be found to have a number of different mills located in different States or areas. In no instance is it possible for a Government contracting agency to have any knowledge of the locus of production prior to receipt of bids and award of contracts. In other words, there is no way of ascertaining in advance where a proposed Government textile award may be carried out.

From all of the facts referred to above, it is evident that the predominant factors in the Textile Industry do not point toward any regional or geographic differences in terms of industry characteristics, and that, in an economic sense, the locality of the industry is very broad. Based upon these considerations, I have concluded that the factors present here do not warrant application of the last of the three criteria contained in section 1(b) of the Act, namely, the minimum wages for persons employed in "groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract."

It is my considered judgment, moreover, that even if the "locality" language of the Act is construed as limiting the entire wage determination function, it is not necessary to impose a narrow geographic connotation on such language in such a manner as to frustrate the entire purpose for which the statute was enacted. While it is true that the term locality is commonly used to denote a geographic locus or unit the term possesses sufficient flexibility in meaning to convey a broad or narrow sense depending upon the context in which it is used. The word must, therefore, be construed within the context of the Act and consistent with the intent and purpose of the Act. As I have previously stated I believe it would be illogical to select this word out of the Act and give it a meaning which would cancel out the entire purpose for which the Act,

was conceived. Furthermore, since the time the Public Contracts Act was enacted minimum wage determinations under this Act for numerous industries have recognized a single nation-wide minimum wage. In only a few industries smaller localities were recognized. It is reasonable to assume that if this construction of the Act did not comport with the Congressional intent Congress would have acted to alter the construction. The fact that Congress, over a period of 16 years, did not alter the statutory language, even after repeated requests, warrants a conclusion that the construction placed on such language by the Department of Labor conforms with the Congressional purpose. Consequently, even on this basis, and considering the record of this proceeding, I find that the locality in which the products of the textile industry are to be manufactured or furnished under Government contracts is coextensive with the entire area in which the industry operates, and that the rate determined herein for the textile industry is the rate prevailing in such locality.

Within the framework of these considerations I have analyzed the available wage data to arrive at a proper determination of prevailing minimum wages in this industry.

ANALYSIS OF WAGE DATA

In the surveys of the cotton and synthetic (and silk) textile industries, the Bureau of Labor Statistics tabulated returns from 467 establishments, employing 289,923 employees. The surveys were limited to plants with 21 or more employees. For plants in this size group, the Bureau's returns covered 40.8 percent of the establishments employing 55.7 percent of the workers. The Census of Manufactures for 1947, the latest available period, indicates that plants with 21 or more employees in these two branches of the textile industry had 99.5 percent of all workers in these branches. The returns were weighted

in accordance with generally accepted statistical procedures to represent all the plants and employment in *plan* plants with 21 or more workers in the branches surveyed.

As noted above, the Bureau of Labor Statistics surveys were limited to plants primarily engaged in spinning or throwing yarn or thread and related operations or in weaving broad woven fabrics. However, since a number of these plants also produced fabricated products such as sheets, pillow cases, towels, and wash cloths and performed dyeing and finishing operations, wages of workers manufacturing these fabricated items and performing dyeing and finishing operations in such establishments are included in the survey and reflected in the tabulations. A letter received from Maxwell R. Conklin, Chief, Industry Division, Bureau of the Census, dated November 6, 1952, states that in the year 1947, 64 percent of all sheets and pillow cases and 95 percent of all towels and wash cloths were produced in integrated establishments, i.e., establishments engaged in spinning and weaving but also producing fabricated items. The information from Mr. Conklin also indicates that only 22 percent of all bedspreads and bedsets and only 2 percent of such textile house furnishings as laundry bags, blankets, pillows and slip covers (other than sheets, pillow cases, towels, wash cloths, bedspreads and bedsets) were produced in integrated establishments. For purposes of reference the letter received from Mr. Conklin is hereby made part of the record and is identified as Supplementary Government Exhibit B.

A number of wage reductions occurred in New England plants between the date of the survey and the date of the hearing, but these changes did not affect the surveys' data for intervals below $1.06½. With this exception, no question as to the adequacy and accuracy of the surveys was raised by either of the petitioners or the National Association of Cotton Manufacturers. However, representatives of the American Cotton Manufacturers Institute raised a num-

be of questions relating to the sampling procedures used by the Bureau in making the survey, and questioned the method followed by the Bureau in obtaining the information on plant minimum entrance rates and plant minimum job rates. With respect to the sampling methods used, it is clear from the testimony of Harry M. Donty, Chief, Division of Wages and Industrial Relations, Bureau of Labor Statistics, that the Bureau, in making these surveys, followed professionally-accepted statistical practices. It is also clear from the testimony that the objections raised with respect to the sampling procedures show an unfamiliarity on the part of the Institute representatives with these standard statistical procedures. There is no question from the evidence in the record that the Bureau of Labor Statistics gave proper weight to both large and small plants, took into account the different types of products included in its surveys and adequately covered all parts of the country. It is also clear from the record that the sample obtained by the Bureau was more than sufficient to assure adequate coverage and results.

I conclude, therefore, that the surveys are properly representative of all establishments included within the scope of the definitions of the cotton and synthetic (and silk) textile industries used by the Bureau.

I also conclude that the Bureau of Labor Statistics wage data adequately reflect wages of workers producing sheets, pillow cases, towels and wash cloths but contain insufficient information on workers producing bedspreads, bedsets and other textile house furnishings. Moreover, these data do not provide a basis upon which a finding can be made as to the prevailing minimum wages for certain other products and operations now included in the definition of the Textile Industry, namely, batting, wadding and filling; the processing of waste; narrow fabrics (fabrics 12 inches or less in width); bags; bandages and surgical gauze; bath mats and related articles; diapers; braid and lace; cordage, rope and twine; and carpets and rugs.

The American Cotton Manufacturers Institute also offered testimony of one witness and telegrams and letters from four companies, designed to show that the Bureau of Labor Statistics had excluded certain low-paid workers from the survey. The witness was Robert K. Argo, Personnel Manager of the Alabama Mills, Inc., who testified with respect to his conversation with the field representative of the Bureau who obtained information from the Clanton, Alabama, plant of the company.

Mr. Argo stated that the Bureau's field representative did not obtain any information with respect to employees whose wages were below $1.015 per hour in the Clanton plant, although according to his recollection at the time of the survey the plant had about 15 employees paid 97 cents, the only rate below $1.015 paid in the plant. Mr. Argo also testified that the field agent told him specifically that in accordance with instructions, no data for custodial employees were being recorded.

There has been received in the record a deposition made by Harry M. Douty clarifying portions of the testimony at the hearing regarding Mr. Argo's statement. This deposition shows clearly that, under the instructions given to the Bureau's representatives, wages of custodial employees were to be excluded only in connection with information obtained on minimum plant entrance rates and minimum job rates. With respect to all other information, however, the instructions were specific that the Bureau's representatives were to survey the earnings of all workers in the plant, including custodial employees. Consequently, the earnings of employees earning less than the plant minimum job rate are included in all tables except Tables 4, 5, and 6 of Government Exhibits 18, 19, and 20, both with respect to the Clanton plant of Alabama Mills, Inc., and with respect to all other mills included in the survey. The deposition states the Bureau's original schedule for the Clanton plant showed 14 workers earning 97 cents; eight of these were

reported as janitors and properly excluded from Tables 4, 5, and 6, under the Bureau's instructions. All 14 of these workers were included in the other tables. The six workers other than janitors, reported by the Bureau to be paid 97 cents were not employed in any of the selected occupations for which specific information was obtained. I cannot conclude from the record that these six workers should have been included in Tables 4, 5, and 6. It is obvious, however, that Mr. Argo's contention that no workers in the Clanton plant paid less than $1.015 per hour were included in the Bureau's survey is without merit.

As noted above, four companies submitted statements in the form of telegrams dealing with this general subject. The Summerville Manufacturing Company, Summerville, Georgia, stated that the minimum wage in that plant was 96.5 cents an hour, a rate paid on the following jobs: scrubbers, yardmen, and cotton truckers. The deposition by Mr. Douty shows that the Bureau reported this plant as paying a minimum job rate of 96.5 cents. This rate was also reported as the minimum entrance rate. The Bureau's record also shows that 16 employees were classified as janitors, three of whom were paid 96.5 cents. The other 13 janitors were paid in excess of this figure. The other three companies, the Pacolet Manufacturing Company, Pacolet, South Carolina, Julia Cade Mills, Inc., Albertville, Alabama, and Whittier Mills Company, Chattahoochee, Georgia, also in telegrams read at the hearing and in later letters supplied information as to minimum wages paid and the occupations to which these rates apply. Mr. Douty's deposition shows that four plants of Pacolet Manufacturing Company were included in the original sample for the survey. The plants were visited by the Bureau representatives, but in each case the company declined to furnish information. The Bureau in consequence substituted other mills of the same general characteristics in accordance with well-established statistical sampling procedures. With respect to Julia Cade Mills, and Whittier Mills, neither was included in the

sample for the survey and no Bureau of Labor Statistics information is available.

It should be noted from the letters received from these companies that with the exception of plants No. 3 and 5 of the Pacolet Company, the lowest rate in the plant is paid to sweepers or scrubbers, which occupations were classified by the Bureau of Labor Statistics for the purpose of this survey in the janitorial category.

On the basis of the evidence, I find that the data in the Bureau's tables showing minimum job rates were accurately collected and compiled and may properly be used in evaluating the prevailing minimum wage practices in the Cotton, Silk, and Synthetic Branch of the Industry.

As indicated heretofore, one of the bases which may be used by the Secretary of Labor in determining prevailing minimum wages is that of "similar work."

With respect to this criterion, evidence in the record points particularly to three occupations which are substantially the same in job content, are common to most firms in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry, and are generally the lowest paid occupations. These occupations are: janitors (excluding machinery cleaners); battery hands; and hand truckers (including bobbin boys.) These occupations were included within the list of "selected occupations" for which the Bureau of Labor Statistics reported separate data. This list, together with the job descriptions applicable thereto, were developed as a result of the Bureau's extensive experience in making surveys of the industry and in consultation with representatives of labor and management. The definitions were designed to permit comparisons between occupations having similar work content in various plants or groups of plants in the industry, regardless of variations from plant to plant in actual nomenclature. There was no criticism in the record that these occupations individually did not

have in fact similar content. In consequence, from the record as a whole, it is clear that prevailing minimum wages for "similar work" can be determined by examining data for these individual occupations.

The three occupations are defined by the Bureau as follows: *Janitor (day porter, sweeper, charwoman, janitress)*: cleans and keeps in an orderly condition factory working areas and wash rooms, or premises of an office, apartment house, or commercial or other establishment. Duties involve a combination of the following: sweeping; mopping and/or scrubbing, and polishing floors; removing chips, trash and other refuse; dusting equipment, furniture, or fixtures; polishing metal fixtures or trimmings; providing supplies and minor maintenance services, cleaning lavatories, showers, and rest rooms. Workers who specialize in window washing are excluded.

Battery hand: transfers or loads quills or bobbins of filling to the battery or loading hopper of automatic looms. May convey filling to looms by means of a hand truck.

Trucker, hand (including bobbin boy): pushes or pulls hand trucks, cars or wheel-barrows used for transporting goods and materials of all kinds about a warehouse, manufacturing plant, or other establishment, and usually loads or unloads hand trucks or wheelbarrows. May stack materials in storage bins, etc., and may keep records of materials moved.

Exhibits at the hearing introduced by the Government include wage data on these three occupations in Exhibits 18, 19, 20, 23, and 24. The area tabulations contained in the last two mentioned exhibits include data for approximately 85 percent of the workers included in the survey. Supplementary Government Exhibits A-1 through A-8 throw additional light on the prevailing minimum wages in the three occupations.

With respect to janitors, Table 3A of Government Exhibit 20 shows 9,299 janitors, slightly less than 2 percent of all of the workers covered by the survey, with an average wage of $1.00 an hour. As Supplementary Government Exhibits 5 and 7 indicate, slightly more than one-fourth of the establishments represented in the survey had no workers whose duties consisted primarily of janitorial services. The absence of reported janitors is particularly conspicuous in northern establishments where more than half of the reporting establishments represented included no workers whose functions were primarily of this type. In such plants the janitorial services made up part of the work of other employees; for example, sweeping around machines in order to permit a continuation of production (work subject to the Walsh-Healey Public Contracts Act) was performed as an incidental part of duties of other production workers.

Supplementary Government Exhibits A-1, A-5 and A-7 provide information as to the lowest rate paid janitors in establishments reporting such workers; and the lowest job rate in establishments which did not report such workers. Altogether 1120 establishments either reported janitors or reported no janitors but gave information as to the lowest established job rate. Of these establishments, 562 or 50.2 percent either reported $1.00 or more as the minimum rate for janitors or having no janitors, reported $1.00 or more as the lowest job rate. These 562 establishments employ 52.5 percent of the production workers in the industry. In addition, Supplementary Government Exhibit A-1 indicates that over two-fifths of the janitors earn from $1.00 to $1.05; vastly more than are found in any other five-cent interval.

Government Exhibits 23 and 24 indicate the importance of the five-cent interval beginning with $1.00 for janitors in each of the various producing areas reporting separately. Thus, for example, in Alabama and in South Carolina most of the janitors are reported within this range and in North Carolina and Georgia a far larger proportion of the janitors

are employed in this interval than in any other. Supplementary Government Exhibit A-7 shows that for establishments having no janitors the rate of $1.00 an hour is by far the most important lowest job rate in the range between 90 cents and $1.05; in this range, almost twice as many establishments reported a minimum job rate of $1.00 as reported any other figure and a similar conclusion is reached on the basis of the number of workers.

From the above it is concluded that $1.00 an hour represents the prevailing minimum wage for janitorial services in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As previously noted, somewhat less than 2 percent of the workers included in the survey are classified as janitors. It is also clear from the record that many of the workers reported as janitors are performing work of types not directly enough connected with production activities to be covered by the Walsh-Healey Public Contracts Act. It is impossible from the record to determine what proportion of janitors are performing such work and the questionnaire returns of the Bureau of Labor Statistics would not yield such information.

There are, however, two other low-paying occupations about which there can be no doubt that the work is of the type covered by the Act. These occupations are hand truckers (including bobbin boys) and battery hands. Except for janitors, these two occupations have the lowest reported average hourly earnings. These occupations combined include 33,500 workers, or 6.9 percent of all production workers covered by the surveys.

Supplementary Government Exhibit A-1 as well as Government Exhibits 23 and 24 underscore the importance of the five-cent interval beginning with $1.00 an hour for each of these two occupations. Thus, for the United States, 29.2 percent of the battery hands received wages between $1.00

and $1.05, as contrasted with 3.9 percent of the 95-99.9 cent interval, and as further contrasted with 10.6 percent in *all* intervals below $1.00. Similarly a total of 27.2 percent of the hand truckers (including bobbin boys) earned between $1.00 and $1.05 as contrasted with 11.4 percent in the preceding five-cent interval. A total of 26.9 percent of the hand truckers (including bobbin boys) received earnings of less than $1.00.

Supplementary Government Exhibits A-4 and A-6 show that most of the establishments reporting either hand truckers or battery hands or both pay a minimum wage to these workers of at least $1.00 an hour and these establishments employ most of the production workers in the Industry. It may also be noted that in the South more establishments pay a minimum of $1.00 an hour to either battery hands or hand truckers than pay minimum wages to these workers at any other rate in the range between 90 cents and $1.05. Supplementary Government Exhibit A-6 indicates that in this range the rates of $1.02 and $1.03 are also important in the South.

Supplementary Government Exhibit A-8 shows data for 211 establishments, primarily located in the North, which reported no workers who primarily performed work included within the description of the occupation of hand truckers (including bobbin boys) or the occupation of battery hands. It will be noted that a majority of these establishments employing a majority of the production workers in such establishments reported the lowest job rate as $1.00 or more. Here again, the rate of $1.00 stands out, with more establishments, employing more workers, reporting a minimum job rate of $1.00 than reported a minimum job rate at any other interval in the range from 90 cents to $1.05. This is true both for the South and for the North.

It is clear therefore that the prevailing minimum wage is $1.00 an hour for the work of hand truckers (including bob-

bin boys) and for the work of battery hands, in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As mentioned above, evidence in the record establishes conclusively that janitors, battery hands, and hand truckers are the lowest paid workers in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry. It is clear, therefore, that a determination of prevailing minimum wages for other occupations would result in rates at least as high, and in most instances higher, than the rate for these three occupations. However, even if detailed occupational wage data were available for every possible duty in a textile mill, it would obviously be undesirable to make a separate determination for each such occupation. The necessity for detailed job descriptions and the overlapping of duties between one job and another would lead to complications and misunderstandings in applying the determinations on the part of the industry and to difficult administrative problems in the proper enforcement of such determinations on the part of the Wage and Hour and Public Contracts Divisions of the Department of Labor. In view of these practical considerations, I therefore conclude that it is entirely proper to apply the minimum rate of $1.00 an hour to all occupations in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry which are covered under the regulations issued pursuant to the Walsh-Healey Public Contracts Act. Work performed in one textile mill is by its very nature similar to work performed in other textile mills. Accordingly, on the basis of the prevailing minimum wages for "similar work" in the Industry, I have concluded that $1.00 an hour is the prevailing minimum wage for all occupations in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry as defined herein.

A second basis for a determination under section 1(b) of the Walsh-Healey Public Contracts Act is wages paid in the particular or similar industries. On this approach, there is special significance to the evidence outlined above that $1.00

is the prevailing minimum rate for janitors, for hand truckers, and for battery hands. Government Exhibits 18, 19, 20, 23 and 24 indicate that these are the lowest paid for the country as a whole of the occupations selected for their particular significance in the industry; and, with rare exceptions, this is true in almost every area. There was no disagreement at the hearing that janitors, including sweepers and scrubbers, generally receive as low a rate as any workers in the Cotton, Silk, and Synthetic Textile Branch of the industry although there was a difference of opinion as to the extent to which such workers are covered by the Act. There was also no disagreement with the Bureau of Labor Statistics' explanation that the "selected" or "key" occupations include a complete range of occupations from the lowest-paid to the highest-paid workers. Workers in these occupations comprise 70.5 percent of all workers covered by the surveys. As noted above, apart from janitors, hand truckers (including bobbin boys) and battery hands generally receive the lowest wage among the "selected" or "key" occupations.

The most important additional lines of evidence as to prevailing minimum wages in the Textile Industry consist of Tables 1 and 5 of Government Exhibits 18, 19, and 20. Table 1 of Government Exhibit 20 clearly shows the importance of the 5-cent interval beginning with $1.00 for the earnings of all workers. Thus for the United States, this is the most important single 5-cent interval, with 11.9 percent of the workers receiving wages within this range, almost twice as many as in the preceding interval and almost as many as the total in all ranges below $1.00. In the Southeast the concentration in this interval is even sharper, with one worker in seven (14.4 percent) receiving wages between $1.00 and $1.05.

Many of the lowest paid workers included in Tables 1 and 7 of Government Exhibits 18, 19, and 20 are watchmen, general janitors (as distinguished from those clean-

ing around the machines), and other types of custodial workers who perform work not covered by the provisions of the Act. Because of the limitations of these tables, Table 5 is of added significance. This table reports the rates which the plant officials reported as established minimum job rates for non-custodial workers. Table 5A of Government Exhibit 20 shows that most of the textile mills in the survey with an established minimum job rate reported the rate to be $1.00 an hour or more. These plants employ 51.4 percent of the workers in the industry, as compared with 44.3 percent of the workers in plants reporting established job minimum rates of less than $1.00 and 4.3 percent of the workers in plants reporting no established minimum. In terms of number of establishments, only $1.02 is more important (6.6 percent as compared with 6.4 percent); in terms of number of production workers employed in these establishments, only $1.03½ is more important. Each of these rates, however, is above the minimum job rate reported by most establishments employing most of the workers. Although janitors and other custodial workers are excluded by the Bureau in obtaining information on established minimum job rates from plant officials, it may be noted that Supplementary Government Exhibit A-2 indicates that in about half of the establishments with minimum job rates the minimum janitor rate was identical with the established minimum job rate and that janitor minimum rates were more frequently above than below the established minimum job rate.

Another line of evidence is contained in the listings of plant minimums provided by the two textile unions. These listings were made a matter of public record at the hearing. It appears clear from the record that a very large proportion of the plants included in these listings also reported information to the American Cotton Manufacturers Institute. However, the minimum rates for only four of the plants listed were challenged. Excluding such plants from the tabulations, it appears that the major proportion of

the industry has minimum rates of $1.00 an hour or more in effect.

From all the evidence in the record, therefore, I conclude that $1.00 an hour is the prevailing minimum wage for the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As noted above, the March 1952 surveys made by the Bureau of Labor Statistics cover plants primarily engaged in spinning and weaving. There is, however, adequate information from other sources indicating that wages in dyeing and finishing establishments are at least as high as those in spinning and weaving plants.

At the hearing a representative of the United Textile Workers of America testified that minimum wages paid in dyeing and finishing plants are higher than those in spinning and weaving plants. This statement was not contradicted.

The listings of plants in the industry supplied by the petitioners contained 510 dyeing and finishing plants employing in excess of 39,000 workers. In his statement at the hearing, the representative of the Textile Workers Union of America stated that only isolated workers in dyeing and finishing establishments were paid less than $1.05.

In addition, representatives of the Textile Workers Union of America and of the National Association of Cotton Manufacturers stated that average hourly earnings in dyeing and finishing plants traditionally exceed those in spinning and weaving plants. An inspection of such figures published by the Bureau of Labor Statistics bears out these statements. A report published by the Bureau shows that in July 1946 the difference was approximately 10 cents an hour. In July of 1952 the average hourly earnings in dyeing and finishing plants were 16 cents more than those in spinning and weaving plants.

An analysis of collective bargaining agreements on file with the Department of Labor as of 1952 gives information on 410 dyeing and finishing (except wool) establishments with almost 32,000 workers. Ninety-seven percent of these plants with 88 percent of the employees had a minimum job rate of $1.00 an hour or more. These figures cover a very large proportion of the industry as indicated by the fact that for 1947 the Census of Manufacturers reported 641 dyeing and finishing (except wool) plants employing 69,000 workers.

In addition, it should be recalled that a number of workers in dyeing and finishing departments are included in the two surveys made by the Bureau of Labor Statistics and, where such workers were included, figures relating to average hourly earnings and minimum job rates covered such workers as well as the workers in the other departments.

On the basis of all the above I, therefore determine that the prevailing minimum wage for all employees engaged in dyeing and finishing covered by the definition of this Industry is $1.00 an hour.

Learners and Apprentices

The Notice of Hearing invited comment and testimony as to the need for inclusion in any amended determination for a provision covering the employment of learners, beginners, and/or apprentices at subminimum rates. The United Textile Workers of America recommend that learners be permitted at subminimum rates for a period of from 4 to 6 weeks and that the present 3 percent limitation be continued. The record shows that this union recommended that the rates for learners be either 90 cents or $1.00.

The Textile Workers Union of America recommended that there be provision for learners at a rate of not less than $1.03 an hour and further recommended the continuation of the 3 percent tolerance and the learning period presently

provided. This latter recommendation was also supported by the Fall River Loomfixer's Union, the Fall River Slasher Tenders' and Helpers Association and the Fall River Drawing-In, Knot-Tiers' and Warp-Twisters' Association. The Soft Fiber Manufacturers' Institute recommended a provision for learners which contained an "adequate" tolerance limitation and an "adequate" learning period. The American Cotton Manufacturers Institute recommended the continuation of the present 3 percent tolerance and the learning period presently provided and that the learner rate should have approximately the same relationship to the prevailing minimum wages as contained in the present determination. No other party made any recommendation with respect to the need for learners.

On the basis of the record, I find that a provision for the employment of learners at subminimum rates should be provided and that the present 3 percent tolerance and learning period for the activities for which the employment of learners at subminimum rates is presently permitted should be continued. I also find that this subminimum rate should reflect the same percentage differential as has previously existed between the industry minimum wage and the learner subminimum wage, namely 8 percent. Accordingly, I find that the wage rate of 92 cents an hour is an appropriate subminimum wage for learners in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

No testimony was introduced at the hearing regarding the need for a subminimum rate covering the employment of apprentices. The present determination does not make any provision for the employment of apprentices at subminimum rates. I find that there is no need for a special provision covering the employment of apprentices.

Handicapped Workers

The regulations permit employment of handicapped workers at subminimum rates on contract work under the Act

and this authority was not at issue in the proceedings. It appears advisable to include in the determination, however, specific authorization for such employment.

Fringe Benefits

The Textile Workers Union of America recommended that a cost-of-living provision be included in the determination reflecting that provided for in its collective bargaining agreements. The United Textile Workers of America recommended the cost-of-living provision and, in addition, all fringe benefits covered in its contracts. The independent Fall River unions supported the recommendation of the Textile Workers Union of America. None of the other parties took a position with respect to these fringe benefits.

No determination issued under the Act provides for cost-of-living increases, shift differentials, paid holidays, insurance or pension plans or any other similar benefits. Provisions of the type listed above would be administratively cumbersome, and for some of them proper enforcement would be impossible. Moreover, there is considerable legal question as to whether such provisions are truly a part of prevailing minimum wages. For these reasons, I conclude that the determination should not contain provisions relating to these fringe benefits.

Assertion of Bias

Following the hearing in this matter a document entitled "Affidavit of Personal Bias or Disqualification of Officers Participating in Decisions" was addressed to me by W. Glen Harlan, attorney for a group of cotton manufacturing companies who were parties to the proceeding. This document asserted that I had prejudged the issue as to a nation-wide minimum wage in this industry, and further that I and other officials of the Department of Labor have in various ways indicated a prejudice as to the wage to be recognized in the industry. The document accordingly requested that

I and such other officials of the Department be disqualified to act further in this matter or participate in any decisions to be rendered herein.

The question of bias was initially raised at the hearing by Mr. Harlan and he at that time requested that certain files of the Department of Labor be produced for the purpose of ascertaining whether they contained any evidence to support a charge of bias. A similar request was submitted to me on two separate occasions following the hearing. In each instance I denied the request on the ground that the material requested had no relevance to the proceeding. My ruling in this regard was based upon two primary considerations, first, that the decision which I am required to make in this proceeding must be based solely upon the record, and, consequently, the record should contain only data which relates to the subject matter of the proceeding, namely, prevailing minimum wages in the Textile Industry; secondly, it is my view that the assertion of a capricious or frivolous challenge for the bias does not warrant a wholesale disclosure of material in the Department files.

It is my duty under the law to make an objective decision based upon all of the evidence and data in the record. I have endeavored to arrive at such a decision, with due regard to the purposes of the Act and my obligations as an administrative officer of the United States. It is my belief and conviction that all other individuals in the Department of Labor who participated in any way in this proceeding have been similarly guided. I therefore find that the assertion of bias submitted herein is completely without merit.

Proposed Decision

Notice is hereby given that, in accordance with all of the considerations expressed herein, I propose to issue a decision in this matter as set forth below. Interested parties may submit, within 15 days from publication of this proposed decision in the Federal Register any exceptions to the

proposed decision or any data intended either in rebuttal or in support of any of the tabulations or data received as part of the record following the close of the hearing.

"The minimum wage determination for the Textile Industry contained in section 202.43 of this part (Title 41 Code of Federal Regulations, part 202) is amended as follows:

1. Subsection 202.43(b) is amended to read as follows:

"(b) *Minimum wage.* (1) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis. The Cotton, Silk, and Synthetic Textile Branch includes the manufacturing, processing, bleaching, dyeing, printing or other finishing of any of the following items which are within the scope of the Textile Industry, as defined herein, and are made primarily of cotton, silk or synthetic fiber or mixtures of these fibers: yarn; thread; broad-woven fabrics (more than 12 inches in width); sheets and pillow cases; towels; and wash cloths and scrubbing cloths.

(2) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, under contracts subject to the Walsh-Healey Public Contracts Act shall be 87 cents an hour, arrived at either on a time or piece-rate basis."

2. Subsection 202.43(c) is amended to read as follows:

"(c) *Subminimum wages authorized:* (1) Learners may be employed subject to the following terms and conditions:

(i) Learners may be employed in the occupations of machine operating, machine tending, machine fixing, and jobs immediately incidental thereto:

(ii) In the performance of contracts for the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry learners may be paid a subminimum rate of 92 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and earnings, based upon those piece rates, if such earnings are in excess of 92 cents an hour. In the performance of contracts for products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, learners may be paid a subminimum rate of 80 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece-rates paid to experienced workers and earnings, based upon these piece-rates, if such earnings are in excess of 80 cents an hour;

(iii) The length of the learning period shall be 240 hours unless the learner has had previous experience in the industry in which case the number of hours of such experience must be deducted from the 240 hour learning period.

(iv) The number of learners may not exceed 3 percent of the total number of machine operators, machine tenders, machine fixers and persons engaged in jobs immediately incidental thereto except where, upon application to the Administrator of the Wage and Hour and Public Contracts Divisions or his authorized representatives, a special certificate has been issued authorizing employment of learners in excess of 3 percent to meet a plant's abnormal situation created by establishment of new plants, expansion of production or plant facilities, and the like. Such special certificates will not be issued where it appears that experienced workers are available to the employer within

the area from which he customarily draws his supply of labor, or that the issue of a special certificate will create unfair competitive labor cost advantages, or will impair or depress working standards established for experienced workers for work of a like or comparable character in the industry.

(2) Handicapped workers may be employed at wages below the applicable minimum wages specified herein upon the same terms and conditions as are prescribed for the employment of handicapped workers by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (29 CFR Parts 524, and 525, respectively), under section 14 of the Fair Labor Standards Act as amended.

The Administrator of the Public Contracts Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped workers not subject to different acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act."

Signed at Washington, D. C. this 5th day of December, 1952. Maurice J. Tobin, Secretary of Labor.

Published in Federal Register December 11, 1952.

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United States Department of Labor

Title 41—Public Contracts

Part 202—Minimum Wage Determinations

NOTICE OF AMENDMENT TO THE DETERMINATION OF THE PREVAILING MINIMUM WAGE FOR THE TEXTILE INDUSTRY.

On December 11, 1952 notice was published in the Federal Register of a proposed decision of the Secretary of Labor in regard to the determination of the prevailing

minimum wage for the Textile Industry (17 F.R. 11197). The notice allowed a period of fifteen days in which interested parties might submit exceptions to the proposed decision or any data intended either in rebuttal or in support of certain material and data received as part of the record following the close of the hearing in this matter. The time for filing exceptions and other material was subsequently extended for an additional fifteen days to January 10, 1953.

Exceptions and objections to the proposed determination have been received from the American Cotton Manufacturers Institute, the National Association of Cotton Manufacturers, the National Association of Wool Manufacturers, the Textile Workers Union of America, and Attorney James L. Rankin on behalf of thirty-four textile companies and Attorney W. Glen Harlan on behalf of thirty-seven cotton textile mills.

In addition to the filing of objections Attorney James L. Rankin and Attorney W. Glen Harlan filed petitions for rehearing and oral argument in order to permit examination of witnesses in regard to certain statistical material received as part of the record following the close of the hearing. These motions were disposed of by an order which I issued in this matter, on January 12, 1953 and addressed to the interested parties. It was indicated in such order that the supplementary statistical data received in the record following the close of the hearing was for the purpose of clarification and elaboration of the basic record material and did not in itself constitute new basic evidence, and that no necessity was shown for the reopening of the hearing.

The exceptions submitted by the American Cotton Manufacturers Institute and Attorneys Rankin and Harlan were directed primarily toward the proposal to establish a single minimum wage for the Industry, and also as to the finding that the wage data in the record supports an industry-wide

minimum wage of $1.00 an hour. Objection was also made to the proposed wage of 92 cents an hour for learners. The Textile Workers Union of America objected to the proposed $1.00 an hour rate on the ground that such rate is too low to have any substantial effect upon the Industry.

The matters raised in these various objections were matters which were considered by me in great detail in arriving at the proposed decision. I have carefully considered these various exceptions and the arguments presented in support thereof and find nothing therein which would require me to modify my proposed decision.

In their submissions the National Association of Cotton Manufacturers and the Textile Workers Union of America have urged that certain additional products be added to the Cotton, Silk and Synthetic Textile Branch of the Textile

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Industry. These proposals and the supporting material have been examined in the light of the whole record and I have come to the conclusion that woven bedspreads, blankets, diapers and dishcloths are primarily made in integrated mills and were adequately represented in the wage data upon which my proposed determination was based. In consequence, these items have been added to the definition of the Cotton, Silk, and Synthetic Textile Branch.

After consideration of all matters presented in this proceeding the proposed decision is hereby adopted, with the definitional change indicated above.

Accordingly, pursuant to authority vested in me by the Walsh-Healey Public Contracts Act this part is amended as follows:

1. Subsection 202.43(b) is amended to read as follows:

"(b) *Minimum wage.* (1) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of

the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis. The Cotton, Silk, and Synthetic Textile Branch includes the manufacturing, processing, bleaching, dying, printing or other finishing of any of the following items which are within the scope of the Textile Industry, as defined herein, and are made primarily of cotton, silk, or synthetic fiber or mixtures of these fibers: yarn; thread; broad-woven fabrics (more than 12 inches in width); sheets and pillow cases; blankets; woven bedspreads; diapers; towels; and wash cloths, scrubbing cloths and dishcloths.

(2) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, under contracts subject to the Walsh-Healey Public Contracts Act shall be 87 cents an hour, arrived at either on a time or piece-rate basis."

2. Subsection 202.43(c) is amended to read as follows:

"(c) Subminimum wages authorized: (1) Learners may be employed subject to the following terms and conditions:

(i) Learners may be employed in the occupations of machine operating, machine tending, machine fixing, and jobs immediately incidental thereto;

(ii) In the performance of contracts for the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry learners may be paid a subminimum rate of 92 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and learnings, based upon those piece rates, if such earnings are in excess of 92 cents an hour. In the performance of contracts for products of the Textile Industry, other than the products of the Cotton, Silk,

and Synthetic Textile Branch of the Industry, learners may be paid a subminimum rate of 80 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and earnings, based upon these piece rates, if such earnings are in excess of 80 cents an hour;

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(iii) The length of the learning period shall be 240 hours unless the learner has had previous experience in the industry in which case the number of hours of such experience must be deducted from the 240 hour learning period.

(iv) The number of learners may not exceed 3 percent of the total number of machine operators, machine tenders, machine fixers and persons engaged in jobs immediately incidental thereto except where, upon application to the Administrator of the Wage and Hour and Public Contracts Divisions or his authorized representative, a special certificate has been issued authorizing employment of learners in excess of 3 percent to meet a plant's abnormal situation created by establishment of new plants, expansion of production or plant facilities, and the like. Such special certificates will not be issued where it appears that experienced workers are available to the employer within the area from which he customarily draws his supply of labor, or that the issue of a special certificate will create unfair competitive labor cost advantages, or will impair or depress working standards established for experienced workers for work of a like or comparable character in the industry.

(2) Handicapped workers may be employed at wages below the applicable minimum wages specified herein upon the same terms and conditions as are prescribed for the employment of handicapped workers by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (29 CFR Parts 524, and 525, respective-

ly), under section 14 of the Fair Labor Standards Act as amended.

The Administrator of the Public Contracts Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped workers not subject to the Fair Labor Standards Act or subject to different minimum rates of pay under the two Acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act."

3. The effective date provided in subsection 202.43(e) is changed to read February 21, 1953.

(49 Stat. 2036; 41 U.S.C. 35)

Signed at Washington, D. C. this 15th day of January 1953.

Maurice J. Tobin, Secretary of Labor

Published in the Federal Register, January 22, 1953.

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 259-53

COVINGTON MILLS, ET AL., *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Civil Action No. 614-53

ALABAMA MILLS, INC., ET AL., *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Judgment

Upon consideration of the certified copy of the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit, filed in this cause on May 14, 1956, reversing the summary judgment entered by this Court on April 7, 1955, and remanding the cause for proceedings in accordance with said opinion, and upon consideration of the motion of plaintiffs for ruling on defendant's motion to dismiss and for judgment in accordance with certified copy of opinion of the Court of Appeals, and the response of defendant Secretary of Labor withdrawing said motion to dismiss, it is this 13 day of June, 1956,

Adjudged, Ordered and Decreed as follows:

1. That the summary judgment of this Court entered April 7, 1955, be and the same is hereby vacated and set aside.

2. That the motion for summary judgment filed by the plaintiffs be and it is hereby denied.

3. That the motions for summary judgment of the defendant and intervening defendants be and they hereby are granted, and the complaint be and it is hereby dismissed.

4. That the plaintiffs pay the costs of these proceedings to be taxed by the Clerk and that defendant and intervening defendants have execution therefor.

5. That jurisdiction of this cause is retained for such other and further proceedings as may be proper.

ALEXANDER HOLTZOFF,
Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1957.

C. A. 614-53

No. 13,597

ALABAMA MILLS, INC., ET AL., *Appellants*,

v.

JAMES P. MITCHELL, Secretary of Labor, et al., *Appellees*.

Appeal from the United States District Court for the District of Columbia.

Before: Edgerton, Chief Judge, and Washington and Danaher, Circuit Judges.

Judgment

This cause was submitted on the record from the United States District Court for the District of Columbia, and on the briefs of the parties pursuant to the stipulation of counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

It is further Ordered by the Court that appellee, Textile Workers Union of America, CIO, and appellees National Association of Cotton Manufacturers, Berkshire Hathaway, Inc., Fitchburg Yarn Company and Cove Street Corporation recover from appellants their taxable costs on this appeal and have execution therefor.

Dated: April 26, 1957.

PER CURIAM.

Circuit Judge Washington dissents.

No. 310

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

ALABAMA MILLS, INC., ET AL., *Petitioners*

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENT TEXTILE WORKERS UNION OF AMERICA IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 310

ALABAMA MILLS, INC., ET AL., *Petitioners*

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENT TEXTILE WORKERS UNION OF AMERICA IN OPPOSITION

I

This case has been here before. *Covington Mills* v. *Mitchell*, No. 682, October Term 1955, 350 U. S. 1002.

This is the sequence. The petitioners brought suit against the Secretary of Labor to enjoin him from putting into effect his minimum wage determination. We intervened in support of the Secretary. The District Court enjoined. *Covington Mills* v. *Mitchell*, 129 F. Supp. 740 (D. C., 1956). On appeal, the Court of Appeals reversed. It held on the merits that the Secretary's determination was valid and remanded to the District Court for the entry of a judgment for the Secretary. It also said that the District Court should have passed on the Secretary's motion to dismiss 144 of the 158 plaintiffs. *Mitchell* v. *Covington Mills*, 229 F. 2d 506 (D. C. Cir. 1955).

Petitioners asked for rehearing *en banc* in the Court of

Appeals. It was denied. 229 F. 2d 506. They then petitioned this Court for certiorari. It was denied. 350 U. S. 1002. They asked for rehearing. In their rehearing petition they said that they apprehended that the Court might have denied certiorari because of the lack of a final judgment as to 144 of the 158 plaintiffs and pointed out that as to 14 plaintiffs—naming them—"there has been final judgment . . . With respect to these 14 petitioners, it is agreed on all sides that there is no question of jurisdiction or standing to sue and that they are properly before this Court as petitioners for writ of certiorari." The petition for rehearing was denied. 351 U. S. 394.

The case went back to the District Court. The Secretary withdrew his motion to dismiss some of the plaintiffs (R. 277). The District Court then entered the final judgment which the Court of Appeals had directed (Pet., p. 63a).

The petitioners appealed again. They asked for a hearing *en banc*. It was denied (R. 312). They then submitted the case without oral argument. The Court of Appeals affirmed *per curiam* on the basis of its earlier decision. *Alabama Mills* v. *Mitchell*, 244 F. 2d 21 (D. C. Cir. 1957).

Petitioners now, again, ask for review in this Court by certiorari. Nothing has happened since this Court denied certiorari in the 1955 Term except the entry of the final judgment which the Court of Appeals had directed on the last go-round.

We believe that the Court correctly denied certiorari in the 1955 Term. We believe that it should, for the same reasons, also deny certiorari this Term. The carbon copy of their 1955 petition which the petitioners have now presented to the Court has no greater merit than the original. If the Court should believe it appropriate now to reconsider on the merits its action in denying certiorari two years ago, we respectfully refer it to the Brief in Opposition which we filed in No. 682, October Term 1955, copies of which are submitted with this Memorandum.

II

The only additional point we think it appropriate to make is in answer to the petitioners' contention that the 1955 petition may have been denied because it was "premature" (Pet., p. 14).

While we will not presume to tell the Court what its reasons were for denying the earlier petition, we think it our plain duty to say that neither our brief in opposition nor that of the Secretary even suggested that certiorari should be denied on the governing issue of federal law because the petition was premature.

If such a suggestion had been made it would plainly have been erroneous. The Court of Appeals then had issued a final decision on the single question of federal law which governed the disposition of the law suit. Contrary to petitioners' present assertion, there is no rule requiring or even suggesting that, in such a situation, certiorari should be denied because of the lack of a final *judgement*. The correct criterion, as we understand it, is whether the Court of Appeals has finally decided, on the merits, the determinative issue of law sought to be reviewed here.[1]

There was such a final determination in this case when the petitioners sought review in the 1955 Term.[2] Even if

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[1] *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 685. A cursory examination of this Court's opinions in the 1956 Term shows that in at least six cases certiorari was granted to review non-final judgments of the Court of Appeals where the above criterion was satisfied. In none of them did the lack of a final judgment seem to be sufficiently important even to warrant notation in the opinion of the Court. *Massachusetts Bonding & Ins. Co.* v. *United States*, 352 U. S. 128; *Brownell* v. *Tom We Shung*, 352 U. S. 180; *Pennsylvania R. Co.* v. *Rychlek*, 352 U. S. 480; *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222; *Lehman* v. *U. S. ex rel Carson*, 353 U. S. 685; *British Transport Commission* v. *United States*, 354 U. S. 129.

[2] The source of petitioners' confusion may be the requirement of a final judgment when an *appeal* is sought to be taken to this Court from a court of appeals, under 28 U.S.C. §1254 (2). Indeed, in the

a final *judgment* were the correct criterion—as it is not—it would have been satisfied. Any suggestion to the contrary was definitely disposed of when the petitioners themselves pointed out, on rehearing, that "there has been final judgment" as to 14 of the petitioners.

III

For the reasons above set forth, it is respectfully submitted that the petition for certiorari herein is wholly without merit and should be denied.

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District Court, petitioners expressly referred to "the public notice of *South Carolina Electric and Gas Co.* v. *Fleming*, Oct. Term 1955, No. 511" (351 U.S. 901) and submitted to the District Court a news article from the Washington Post explaining that this Court's dismissal of the appeal in that case was probably based on the lack of finality, not on the merits.

No. 682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

COVINGTON MILLS, ALABAMA MILLS, INC., et al
Petitioners

vs.

JAMES P. MITCHELL, SECRETARY OF LABOR,
TEXTILE WORKERS UNION OF AMERICA,
NATIONAL ASSOCIATION OF COTTON MANUFACTURERS,
et al

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT TEXTILE WORKERS UNION OF AMERICA IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT TEXTILE WORKERS UNION OF AMERICA IN OPPOSITION

QUESTIONS PRESENTED

1. Whether, in determining the minimum wage which government procurement agencies shall specify in their contracts for the purchase of textile products, the Secretary of Labor is required by the Walsh-Healey Act to disregard his finding that there is a single competitive nation-wide market, unrelated to the geographic location of producing units, for products of the textile industry, and required to find separate textile minima for each locality in which textiles are manufactured or furnished.

2. Whether Congress can constitutionally give the Federal Courts the duty of overseeing, at the behest of any manufacturer or dealer in the affected industry, the Secretary of Labor's determination as to the terms on which government procurement agencies shall offer to purchase supplies.

STATEMENT

The statement of the case in the petition for certiorari omits several pertinent facts.

Under the Walsh-Healey Act the Secretary of Labor is required to determine for the government procurement agencies the minimum wage which such agencies shall specify in their contracts as the minimum wage to be paid in the performance of the work contracted for. Since 1948, the minimum wage so determined on a single industry basis, for the textile industry has been 87 cents per hour. 13 F. R. 6083. In January, 1952, the Textile Workers Union of America filed a petition with the Secretary of Labor claiming that this determination was out-dated because of the increased wage levels in the industry and asking, therefore, that he make a new finding as to the prevailing minimum wage in the industry. (R. 18, 55.)

Hearings were held in September, 1952, a notice of proposed amendments to the pre-existing wage determination was issued, exceptions were filed to this proposed amendment, and finally on January 15, 1953, the Secretary of Labor issued the final notice of amendment which is here under attack. (R. 9, 14, 55.) Insofar as here relevant, the amendment found that the prevailing minimum wage for persons employed in the manufacturing or furnishing of the products of the cotton, silk and synthetic branch of the textile industry was $1.00 per hour.

It is this amendment to the Secretary's pre-existing finding as to the prevailing minimum wage in the textile industry which is here under attack.

The principal issue in the administrative proceeding, from the beginning, was whether the Secretary, in making his

finding as to the prevailing minimum wage for this particular industry, should make a single industry-wide finding, as in the past, or should make separate, individual determinations of the prevailing minimum wage for textile plants in each of the separate local communities in which textiles are produced. (It was never urged so far as we know, that the Secretary should make findings as to the prevailing minimum wages for *all* workers in each local community, or even for workers in selected groups of industries in each community. The contention, rather, was for a determination of the minimum *textile* wage in each community.)

The Secretary did not make his determination on this contested issue in a vacuum. On the contrary, his final decision was based on the specific findings as to the nature of this particular industry which are set forth on pages 30-32 of the record. The testimony before the Secretary showed, and he found, that competition in this industry is nationwide in scope and marketing of the products of the industry is on a national scale. It is rare in this industry for a mill to market its product within a limited geographical area. The usual practice, indeed, is to sell the vast bulk of textiles through the textile center known as Worth Street in New York City. In this center, producers of textiles from such widely separate areas as Maine and Alabama compete for the same business, and the location of a plant has virtually no effect on its competitive position.

The same pattern which the Secretary found to be true of the industry generally applied to government purchases of textiles. In the normal case, the government invites bids from firms located in every textile producing area and bids are received from mills in widely separated regions. There is no way of ascertaining in advance where a proposed government textile contract may be performed. Indeed, various steps in the processing of a single product may take place in different states and different regions.

Based on these findings as to the nature of the textile industry, the Secretary concluded that the only appropriate way of effectuating the purposes of the Act was to continue the previous practice, with respect to wage determinations in this particular industry, of investigating and finding the prevailing minimum wage on an industry-wide basis. On the basis of data covering the entire industry, he found that the prevailing minimum wage was $1.00 per hour.

The Secretary's determination was immediately challenged in the courts in this proceeding. His findings with respect to the nature of the industry and the need for an industry-wide determination were not challenged. Instead it was urged that the Secretary lacked authority under the Walsh-Healey Act to make this kind of determination, irrespective of the nature of the industry.

This contention was upheld in the District Court, which felt compelled to follow the decision of the Court of Appeals in *Lukens Steel Co.* v. *Perkins,* 107 F. 2nd 627 (D.C. Cir. 1939) *reversed on other grounds,* 310 U.S. 113. The Court of Appeals, however, reversed, refusing to upset an administrative practice of 19 years' standing which Congress itself had refused to change. One judge dissented. A petition for rehearing was filed and denied by the whole Court, with two members other than the judge who had dissented on the merits voting in favor of a hearing *en banc.*

SUMMARY OF ARGUMENT

This case arises as a result of an unsuccessful effort to amend the Walsh-Healey Act so as to change its consistent, 19 year old, interpretation. The proponents of the substantive charges in the Act, being unable to pass them, settled for a provision throwing this hot political issue into the courts. Having no choice, the Court of Appeals took jurisdiction, but refused to reverse the administrative interpretation which Congress had itself refused to change.

The decision of the Court of Appeals is correct and accords with both the proper judicial approach to this kind of problem and the language of the statute itself. There is no conflict with the decision of any other Court of Appeals and none is likely to appear. If this Court denies certiorari, the question of statutory interpretation involved will, for all practical purposes, be finally resolved and the Secretary of Labor will be free to continue to apply the Walsh-Healey Act in the same way as it has been consistently applied in the 20 years since its passage.

By denying certiorari the Court will, furthermore, avoid decision of the difficult constitutional question—not decided by any of the courts below—of whether Congress may constitutionally confer jurisdiction on the Federal courts to adjudicate what this Court has found, in *Perkins v. Lukens Steel Co.*, 310 U.S. 113 not to present a justiciable case of controversy.

ARGUMENT

I. THIS COURT SHOULD NOT UNDERTAKE TO REVIEW ACTION BY THE SECRETARY AS HOUSEKEEPING AGENT FOR THE GOVERNMENT WHICH CONGRESS HAS REFUSED TO REVERSE

This is, in many respects, an extraordinary litigation. Unlike most cases of judicial review of administrative action, there is here no administrative ruling directly bearing on the litigants. The Walsh-Healey Act, unlike the Fair Labor Standards Act, does not in itself require anyone to pay a certain level of wages. Nor does a minimum wage determination by the Secretary of Labor under the Act have such an effect.

The nature of the Act and of the determinations made by the Secretary under it have been aptly described by this Court in the *Lukens Steel* case:

"Acting through its agents as it must of necessity,

the Government may for the purpose of keeping its own house in order lay down guideposts by which its agents are to proceed in the procurement of supplies, and which create duties to the Government alone. It has done so in the Public Contacts Act." 310 U.S. at 127.

"In this legislation Congress did no more than instruct its agents who were selected and granted final authority to fix the terms and conditions under which the Government will permit goods to be sold to it. The Secretary of Labor is under a duty to observe those instructions just as a purchasing agent of a private corporation must observe those of his principal . . . For erroneous construction of his instructions, given for the sole benefit of the principal, the agent is responsible to his principal alone because h . misconstruction violates no duty he owes to any but his principal. The Secretary's responsibility is to superior executive and legislative authority." 310 U.S. at 129.

Furthermore, as this Court also said in *Lukens*:

"the process of arriving at a wage determination [by the Secretary of Labor] contains no semblance of these elements which go to make up a litigable controversy as our law knows the concept." 310 U.S. at 113.

Why, then, in the light of the nature of the Act and of the Secretary's function in making a wage determination, did Congress reverse the decision of this Court in the *Lukens* case as to the lack of standing to sue and provide for judicial review of the Secretary's wage determinations. Why, in particular, did it pinpoint the "locality" and "open market" questions?

The legislative history of the so-called Fulbright amendment supplies the answer. Properly speaking, that history goes back to January, 1937, when Secretary of Labor Perkins, in the very first minimum wage determination under

the Walsh-Healey Act, made an industry-wide finding as to the prevailing minimum wage in the men's work clothing industry.[1] Through the years that followed, Secretary after Secretary continued the practice of making wage determinations on an industry-wide basis wherever examination of the facts in the particular industry indicated that this was appropriate.[2]

This practice was public and notorious. It was well known to Congress. In addition to the Secretary's annual reports to Congress, which set forth the specific determinations made, there were innumerable legislative hearings in which the Secretary's practice was made known.[3] And, since this Court's decision in the *Lukens* case in 1940, it has been clear that Congress, and Congress alone, had the power to correct any misconstruction of his authority by the Secretary.

During this period there were, naturally, some who objected to the Secretary's practice, and there were numerous recommendations for legislation to amend the Act so as to prevent the continuation of this practice.

But Congress took no action on any of the suggested amendments of the Act until 1952. At that time the administrative proceedings in this very case were already pending and known to Congress. Although a hearing had not yet been held, the petition of the Textile Workers Union of America had been filed and note of it was made on the floor of the Senate.[4]

Whether or not in response to this particular administrative proceeding, Senator Fulbright in the spring of 1952

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[1] Wage Determination for Men's Work Clothing Industry, 2 F.R. 233 (February 4, 1937).

[2] 41 CFR, Parts 202 *et seq.*

[3] See, e.g., H. Rept. 2608 on H.R. 6449, 75th Cong., 3d Sess. (1938), Hearings before Senate Committee on Education and Labor, 76th Cong., 1st Sess. (1939) pp. 95, 105.

[4] 98 Cong. Rec. 3258 (1952).

proposed to amend the Walsh-Healey Act by inserting provisions in a bill then before the Congress to amend and extend the Defense Production Act of 1950.[5] Three separate amendments to the Walsh-Healey Act were proposed. The first would have statutorily reversed the administrative interpretation of the "locality" provision. The second would have changed the language of the open-market exemption. The third would have made the determination procedure subject to the provisions of the Administrative Procedure Act.

In his formal statement introducing these amendments, Senator Fulbright noted that the first—relating to the locality question in issue in this case—would require a change in the existing administrative interpretation of the Act. He then made no charge, however, that the administrative interpretation was contrary to the statute or that the change was necessary to accomplish the original Congressional intention.[6] Instead, he argued that the existing and accepted practice of the Secretary was socially and economically undesirable. In sharp contrast to such reasons, he did charge, with respect to the second amendment—relating to the "open-market" exemption—that the Secretary of Labor had in effect rewritten the exemption, contrary to the Congressional intention, and that the proposed amendment was therefore necessary to correct the misinterpretation.[7]

The Senate Banking and Currency Committee which

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[5] 98 Cong. Rec. 4128 (1952).

[6] In the hearings which subsequently took place Senator Fulbright did make the contention, now made here by petitioners, that the original Congressional intention was to require determinations to be limited to local communities, although he seemed to say that they should be based not on a particular industry but on "industries operating in the locality" in which the contract is to be performed. Hearings before the Senate on Banking and Currency on S. 2594 and S. 2645, 82d Cong., 2d Sess. (1952) pp. 2603, 2705. Other Senators disagreed, of course, *id.* at 2618, 2642.

[7] 98 Cong. Rec. 4128.

considered these amendments rejected the first proposed amendment, relating to the "locality" question. It did, however, recommend the other two amendments and included them in the bill which it reported on May 27, 1952, with three northern Democratic Senators objecting to the "open-market" change.[8]

When the matter came to the Senate floor, however, there was opposition even to these two proposals. A group of New England Republican Senators proposed to offer on the floor an amendment to the reported bill which would eliminate all of the proposed changes in the Walsh-Healey Act.[9]

The legislative situation thus posed was a difficult one. The Korean War was in progress and the amendments to the Walsh-Healey Act had been interjected, in the Senate only, into the consideration of the Defense Production Act, emergency legislation which, if not extended, would expire on June 30, 1952.[11] The divisions among the Senators as to the Walsh-Healey Act crossed party lines and tended to divide both parties in the spring of a Presidential year. As often happens in such a situation, it seemed desirable to the proponents of change to find a face-saving method of avoiding a division on these difficult issues. Such a solution was found.

Senator Fulbright, and those who supported a change in the substance of the Walsh-Healey Act, agreed to withdraw their changes. (Actually, at the time this agreement was reached, the only substantive change in the bill before the Senate concerned the open-market exemption. The amendment on the locality question had been lost in Committee, with Senator Fulbright's apparent concurrence.) In return, the New England Senators who opposed any change in the Walsh-Healey Act agreed to a provision making determinations subject to the Administrative Procedure

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[8] Senate Report No. 1599 on S. 2594, 82d Cong., 2d Sess.

[9] 98 Cong. Rec. 6336.

[11] Senate Report No. 1599 on S. 2594, 82d Cong., 2d Sess., p. 36.

Act and subject to review at the behest of any aggrieved person—who was "deemed" by the compromise to include every manufacturer in an industry in which a determination was made. They agreed also to a newly written specific provision making it clear that, even after contracts were executed containing the prescribed stipulations, the Courts could review not only the open-market question but also the locality question and any other legal issues that might appear.[12] On this basis, the compromise substitute was adopted unanimously by the Senate[13] and was subsequently agreed to by the House conferees.[14]

Congress, in sum, was fully advised and informed as to the consistent administrative action which its agent, the Secretary of Labor, had taken in administering the Government's program with respect to procurement. It was proposed by some that Congress, as the principal, revise its instructions to its agent, in two respects: (1) The Secretary's authority to base his minimum wage findings on industry-wide data, and (2) the scope of the exemption from the Act of "open-market" purchases. Congress refused to make either change. Instead, it made the question of whether its agent had properly complied with his instructions subject to judicial review. It thereby transferred to the federal courts the burden of deciding questions which the proponents of change in the administration of the Act were afraid to bring to a vote in the Congress.

As Senator Fulbright said of the compromise which was enacted:

> ". . . any other approach, it seems to me, would have involved a long and difficult and uncertain controversy, which might not have been successful. But when this

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[12] 98 Cong. Rec. 6529-6530.

[13] 98 Cong. Rec. 6531.

[14] House Conference Report No. 2352, 82d Cong., 2d Sess., pp. 27-28.

approach was suggested, it seemed to me wiser to follow it. After it has had an opportunity to work; if the courts do not interpret it in the way Congress thinks they should, we of course, would have an opportunity to change the basic law." 98 Cong. Rec. 6531.

The present case arises as a direct consequence of this decision to pass the buck to the Federal courts. The administrative proceeding involved was pending when the Fulbright amendment was before Congress and was the first one concluded after its passage. Involved in the law suit are substantially all of the major manufacturers of cotton, silk, and synthetic textiles. The southern manufacturers, many of whom in fact pay minimum wages in excess of $1.00, accepted the Congressional invitation to be "deemed" persons aggrieved and joined together as plaintiffs; the northern manufacturers intervened as defendants. The major union in the industry also joined as a defendant. All of the parties having an economic interest in the matter have, thus, transferred their controversy from Congress to the Federal courts.

That this is an undersirable result is, we think, plain. But, assuming the constitutionality of the Fulbright amendment (a point we touch on below) the courts below were required to hear the case. This Court is not. Review in this Court is a matter of discretion and, we submit, that discretion should be exercised to deny further hearing in a case of this nature.

The Court of Appeals has declined to reverse the administrative interpretation which Congress, with full awareness of the facts, itself refused to overrule. This Court should terminate the matter right there by denying further review. Any other course would place upon this Court the burden of deciding a question which Congress not only has power to decide, but which we believe Congress also has the duty to decide—either by refusal to amend the act, as in

the past, or by a change in the terms of the statute. This Court should not place itself in the position of rescuing the objectives of those who desired amendment of the statute but did not have the votes in Congress to achieve that amendment. Nor, we believe, should it even enter the controversy in the absence of any Congressional mandate that it do so.

II. THE DECISION BELOW IS CLEARLY CORRECT

Even if we ignore the obvious attempt to obtain through litigation a result which Congress refused to enact, the decision below is clearly correct.

The arguments against that decision—the best of which are set out in the petition for certiorari—miss the essential point because they misstate the issue. According to petitioners, the question is whether the Walsh-Healey Act gives the Secretary the power to find a "single and uniform Nation-wide standard . . . for [the] entire industry or . . . the wage standards . . . prevailing in their respective localities." This is *not* the question. We concede that if the Secretary were to make findings on a community basis, covering all of the industries in a given area, he would be restricted by the "locality" language of the Act. He would be required, in the words of the statute, to make a finding as to the prevailing minimum wage in the "groups of industries currently operating in the locality." But the Secretary is also given authority to make findings as to the minimum wage paid to persons "employed on similar work" or paid in the "particular industry." The question is whether, if he chooses to proceed in that fashion, he is also required to make his findings for similar work or for a particular industry on a locality-by-locality basis.

The question, in short, is not whether Congress intended to require a manufacturer to come up to national wage standards or community wage standards. If the Secretary chose to proceed on a geographical rather than an industry

basis, the answer is clearly the latter. That is, if he chose to make a finding as to the prevailing minimum wage in an area, either for all industry or specified groups of industries, and as a result all government contracts, or contracts in the industries covered, would require that all workers in that particular area be paid the specified minimum, then the finding would have to be limited to the "locality." But the Secretary has not proceeded in that way here. Here the question is whether, in exercising the alternative power to proceed on a single-industry basis, the Secretary is required to set standards for that industry on the basis of wages paid in that industry generally or the wages paid *in that industry* in each local community.

The distinction is of tremendous importance because the wage differentials between different industries are very often larger than differentials between geographical areas within the same industry. For example, as of the date of the hearings herein, the prevailing minimum wage for this particular industry was found to be $1.00 per hour, when all the plants, both in the high and low wage sections of the country, were considered. The minimum wage in New England actually was higher than this prevailing minimum: $1.13½. But the difference between the two was much smaller than the difference between minimum textile wages and minimum steel wages, even in the same areas. The uniform minimum wage in the basic steel industry on the date of the hearings herein—in Alabama as well as Pennsylvania—was $1.43½. (It is now $1.69½.) The difference between wages paid in the high and low wage areas of this industry were thus substantially smaller than the difference between the wages paid in this industry and the wages paid in the steel industry in the same "locality."

Under the Act, as construed by the Secretary, a prevailing wage finding could be made either on a single industry basis or on a community basis. What the petitioners contend for is neither. They do not ask for a local community

standard—including wages paid in other industries such as steel—but a standard limited both by industry *and* by geography. And they insist that this kind of standard is the only kind of standard which the Secretary is permitted to use in making single industry or similar work determinations.

In support of this contention they rely primarily upon a "legislative history" distilled primarily from casual comments made by individual members of Congress while the bill was on the House floor. Once the distinction between community standards and industry standards is seen, however, most of these comments are quite consistent with the Secretary's interpretation of the Act. All but one of the remarks quoted refer to prevailing wages in the community, presumably meaning the prevailing minimum for all or groups of industries in the community. They do not exclude the possibility that the Secretary could also proceed not by finding community levels for all industry but national levels for a particular industry. At most they show that in finding general levels the Secretary was restricted to local communities. That this is a proper construction of these remarks is shown by the very statement of Congressman Healey—one of the authors of the bill—upon which petitioners so strongly rely. He clearly indicated that the community approach was only one of alternative standards. As he put it, the standard set by the bill was:

> "the prevailing minimum wage *for similar work or in the industries operating in the locality* . . ."[15]

The casual statements on the floor of the House by other Congressmen referring to community wage standards are balanced by other statements which affirmatively support the Secretary's position. Thus, Representative Citron, whose statement about community wage standards is relied upon by petitioners, also said, in the very same speech, that "the opposition to this measure . . . comes from Southern man-

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[15] 80 Cong. Rec. 10002, quoted at p. 16 of the petition herein.

ufacturers who would be forced to raise their labor standards" [16] and that the bill was necessary to prevent unfair competition from firms moving to "sections where they can take advantage of low standard wages." [17]

The plain fact is that the language of this statute is ambiguous and its legislative history unclear. What is clear is that if it is construed as suggested by petitioners it would, first of all, be incapable of administration. Hundreds of separate community minima for each industry would have to be found, after notice and hearing and, presumably, revised at each change in wage levels. And even if it were possible to accomplish this, the only effect would be to punish those whom Congress meant to protect and encourage an economic movement which Congress meant to impede.

As the Court of Appeals correctly pointed out, the only effect of an act so administered would be freeze the wage costs of producers in high wage areas and offer an inducement for government suppliers to move their shops to less industrialized communities having lower wage levels. Indeed, as construed by petitioners, the Act would reward most the producer who moved his plant to a community where there was no textile mill. Whatever wage he chose to pay would be prevailing textile wage for that "locality."

There is no evidence that Congress intended to set up any such system of incentives. To the contrary, deterrence of the "runaway shop" movement was one of the prime considerations in the enactment of the bill. As Senator Walsh said, in supporting the bill before the House Committee:

> "The boot and shoe industry is being wiped out in the boot and shoe centers of Massachusetts . . . They are moving up to New Hampshire; the are moving up to Maine; they are moving into rural parts of my own

[16] 80 Cong. Rec. 10008.
[17] 80 Cong. Rec. 10009.

State and paying one-half the wages that are paid in localities where the labor organizations have been able to demand and exact a living wage." (Hearings before the House Judiciary Committee on S. 3055, 74th Cong., 1st Sess. p. 117)

Or, as the Commissioner of Labor Statistics said, an example showing the need for legislation was a case of:

> ". . . a union firm breaking its contract with the union, shutting down its plant, going to a State something like a thousand miles away, opening up a new plant under much lower conditions than normal standards, and getting a contract with the Federal Government, because under the law it was the lowest bidder and therefore could get the order." *Id*, at p. 13.

The effects described by Senator Walsh and Dr. Lubin would, of course, take place only in an industry in which competition was nation-wide and variations in wage rates paid were an important competitive factor—i.e., in an industry like the textile industry. But, in such industries, the act which Congress passed to limit the incentive for runaway shops would have the absurd effect of encouraging them, if the petitioner's construction of the Act is correct. Surely the courts should affirmatively recoil the government's purchasing agencies to adopt such a construction, irrespective of the facts, only on a showing in the clearest possible terms that Congress so intended. And no such showing is here made either by reference to the words of the statute or by selecting isolated words uttered by a few Congressmen in floor debate, particularly where the intention sought to be shown by those selected quotations is contradicted by other statements of the sponsors of the legislation, Senator Walsh and Representative Healey.

III. THERE IS NO CONFLICT

The petition does not claim any conflict of circuits or, indeed, any conflict between the decision of the Court of Appeals and any decision of this Court. Much is made of the fact that several District Judges in the District of Columbia, had prior to the decision of the Court of Appeals, come to a different conclusion than that ultimately reached by the Court of Appeals. But this, surely, was to be expected in view of the prior opinion of the Court of Appeals in the *Lukens* case. The matter is now settled in the District of Columbia Circuit and the decisions of all courts in the Circuit will presumably conform to the mandate of the Court of Appeals in this case.

Nor is conflict between the circuits likely to arise. Certainly there will be no future controversy about the $1.00 minimum wage in view of the increase in the minimum wage for all industries affecting commerce to $1.00 per hour. And determinations for other industries will continue to be tested in the District of Columbia Circuit since—as petitioners correctly point out—the Secretary of Labor may be sued only in the courts of the District of Columbia.

The result is that if this Court denies certiorari this matter will be at rest. Or, more precisely, the matter will be precisely where it was when Senator Fulbright abandoned his effort to change the substantive law and instead, sought to achieve a reversal of existing practice by referring the matter to the courts. As he said then, if the interpretation is not what Congress thinks it should be, "we of course, would have an opportunity to change the basic law."

IV. DENIAL OF CERTIORARI WILL AVOID DECISION ON A CONSTITUTIONAL ISSUE NOT PASSED ON BY THE COURTS BELOW.

The petitioners here are 158 separate companies who have joined in this suit pursuant to the provision in the so-called Fulbright Amendment which says that review of wage deter-

minations under the Walsh-Healey Act may be had by any person adversely affected or aggrieved thereby.

> "who shall be deemed to include any manufacturer of, or regular dealer in materials, supplies, articles or equipment purchases or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable."

This statute, upon which jurisdiction here is based, contains no requirement that the plaintiff actually be adversely affected. That is to say, it does not require that he be a manufacturer who pays wages lower than the prevailing minimum found by the Secretary, or that he is a manufacturer who has in the past or will in the future enter into contracts for the sale of materials to the Government. Indeed, even as to manufacturers who would meet such unspecified requirements, there would be no legal aggrievement or adverse effect since, as this Court has said in the *Lukens* case, they can have no legal interest in the terms under which the purchasing agents of the Government will permit goods to be sold to it.

It would seem plain, therefore, that there is implicit in this case a serious constitutional question as to whether the grant of jurisdiction contained in the Fulbright Amendment is consonant with the requirements of Article III of the Constitution. This question is a two-fold one. First, there is the question, in the words of the Court of Appeals, in another case under the same statute, of "whether Congress may constitutionally redefine as a case or controversy under Article III a dispute which the Supreme Court has held not to be such a case or controversy." *Textile Workers Union of America* v. *Allendale Co.*, 226 F. 2d 765, 767 (D.C. Cir., 1955).

Second, there is the question of whether Congress can grant jurisdiction without limiting such jurisdiction to the

cases in which some more or less direct economic aggrievement can be shown by the plaintiffs.

With respect to the first question, this Court has said that "a wage determination by the Secretary contemplates no controversy between parties and no fixing of private rates; the process of arriving at a wage determination contains no semblance of these elements which go to make up a litigable controversy as our law knows the concept. . . . Judicial restraint of those who administer the Government's purchasing would constitute . . . a departure into fields hitherto wisely and happily apportioned by the genius of our polity to the Administration of another branch of government." *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 at 127-128. This language surely seems to intimate that the lack of judicial power to interfere with the administration of the Government's purchasing operations is based not only on a lack of Congressional authorization for such interference, but on the basic separation of powers provided for in the Constitution. Indeed, this Court said almost that when it said in the *Lukens* case, that it rested its conclusion that the plaintiffs lacked standing

> "upon reasons deeply rooted in the constitutional divisions of authority in our system of Government and the impropriety of judicial interpretations of law at the instance of those who show no more than a mere possible injury to the public." 310 U.S. at 132.

Even if it be assumed that Congress could create a litigable controversy where this Court has found none to exist, there remains the second question as to whether it can issue a grant of jurisdiction in the particular terms of the Fulbright amendment. Certainly it seems to us far fetched to argue that there is a case or controversy in the constitutional sense between the Secretary of Labor and a manufacturer who has never done Government work and who is under contract with the union to pay wages in excess of the minimum which,

if the Secretary's order is valid, will be specified as the minimum wage to be paid in work performed for the government. Yet the Fulbright amendment would appear to grant jurisdiction over just such a case.

We advise this Court of the existence of these constitutional issues with some diffidence, since we did not press argument on them in the courts below in this case, and there has been no decision on them. But, they do go to the jurisdiction of this Court to hear the case, although not necessarily to the jurisdiction of the District of Columbia courts.[18] We therefore feel under an obligation to point out to the Court that a question as to jurisdiction does exist which was not argued or decided in either of the courts below.[19]

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[18] Federal Radio Commission v. General Electric Co., 281 U. S. 464.

[19] This Court is, we think, entitled to a full explanation of our failure to press this jurisdictional question in the courts below. In the District Court, we did, in the proposed answer which we attached to our motion to intervene, set forth our contention that the Fulbright Amendment is unconstitutional. Our intervention, however, was opposed by the plaintiffs. And one of the grounds for the opposition was "the familiar ground that an intervenor has no right to challenge the jurisdiction of the Court . . . *Fink* v. *Oliver Mining Co.*, [35 F. Supp. 316 (D. Minn. 1941)]".

Despite the opposition, our motion to intervene was granted. Subsequently, however, and while this case was still pending in the District Court, a similar suit was instituted to set aside the Secretary of Labor's determination as to the prevailing minimum wage in the woolen and worsted industry. *Allendale Co.* v. *Mitchell*, now pending in the Court of Appeals for the District of Columbia Circuit. We filed a motion to intervene in that case similar to that filed in the present case.

In Allendale, however, our motion, as well as a motion by a manufacturer who sought to intervene on the side of the Secretary, was denied in the District Court. We appealed that denial. But, until the appeal was decided, we did not judge it appropriate to jeopardize our now uncertain status as an intervenor by pressing the constitutional point which we had pleaded in our answer.

While the appeal on the intervention question was pending in the Court of Appeals in the Allendale case, the present case was argued and decided in the District Court and argued in the Court of Appeals.

It is our position that, irrespective of these constitutional issues, this Court should deny certiorari, for the reasons earlier stated. But the Court may feel that the fact that the case does contain a constitutional issue as to jurisdiction, which has not been refined by the process of briefing, argument and decision in the courts below, and as to which it does not have the opinion of the Court of Appeals, is an additional reason for denying certiorari.

The decision of the Court of Appeals in this case is not a decision upholding the constitutionality of the Fulbright Amendment, even *sub silentio,* since the Court found the

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Finally, on July 14, 1955, the Court of Appeals *en banc,* after reargument, rendered a 4-3 decision reversing the order of the District Court which had denied the motion to intervene. *Textile Workers Union of America* v. *Allendale Co.*, 226 F. 2d 765. In addition to deciding that the District Court erred in denying the motions to intervene, the Court of Appeals noted the existence of the constitutional issue as to jurisdiction. That issue, it said, would probably be determined in the main suit. But, it continued, "unless and until the trial court decides that this litigation is beyond the judicial power, both appellants should be permitted to intervene."

In accordance with this decision, we promptly and vigorously pressed our constitutional objection in the only forum then remaining open to us. The instant case already had been argued in the Court of Appeals. The *Allendale* case, however, was still pending in the District Court. After being admitted to intervention in that case on remand from the Court of Appeals, we filed a motion to dismiss on the ground that the statute upon which jurisdiction was based was unconstitutional. We filed a memorandum and presented oral argument in support of that motion and it was considered by Judge Youngdahl in the District Court at the same time as cross motions for summary judgment which had also been filed by the parties.

On February 10, 1956, Judge Youngdahl overruled our motion to dismiss and, at the same time, found generally for the defendants on the merits. The plaintiffs have appealed the judgment on the merits to the Court of Appeals. *Allendale Co.* v *Mitchell,* No. 13,187. *We* have appealed the denial of our motion to dismiss. *Textile Workers Union of America* v. *Allendale Co.*, No. 13,190. Both appeals are now pending in the court of Appeals. We intend, when the case is heard in that Court, to press our appeal and thus to obtain and adjudication by the Court of Appeals of the constitutional issue which that Court pointedly noted in the earlier appeal in the same case.

plaintiffs had no case on the merits and thus was not compelled to decide the jurisdictional question *sua sponte* (despite its express notice of the issue in its earlier decision in the *Allendale* case). Cf. *Huffman* v. *Ford Motor Co.*, 345 U.S. 330. But if certiorari is granted by this Court we feel that our responsibility as counsel and to the Court will require us to press the issue here and thus present it to this Court for decision.

CONCLUSION

For the reasons above set forth, it is respectfully submitted that this Court should deny the petition for certiorari.

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No. 310

In the Supreme Court of the United States

October Term, 1957

ALABAMA MILLS, INC., ET AL., PETITIONERS

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, ET AL.

On Petition For a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT SECRETARY OF LABOR IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals, which simply affirmed *per curiam* its earlier opinion on the prior appeal of this case, is reported at 244 F.2d 21 (Pet. App. 1a). Its opinion on the prior appeal is reported at 229 F.2d 506, certiorari denied, 350 U.S. 1002, rehearing denied, 351 U.S. 934. The judgment of the District Court, entered without opinion upon remand after denial of certiorari, is also not officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 26, 1957. The petition for a writ of certiorari was filed on July 24, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the present petition is not untimely and otherwise inappropriate in view of this Court's previous denial of both a writ of certiorari and a rehearing on the prior petitions filed by these same petitioners for review of the same questions and of the same decision of the Court of Appeals.

2. If the petition is timely and otherwise procedurally appropriate, whether a writ should now be granted to review the reaffirmance by the court below of its earlier decision upholding the statutory authority of the Secretary of Labor to determine a single industry-wide prevailing minimum wage under the wage determination provisions of the Public Contracts Act, in accordance with the consistent and long-standing administrative practice which Congress has accepted throughout the years since the enactment of the Act in 1936.

STATUTES INVOLVED

The pertinent provisions of the Walsh-Healey Public Contracts Act of 1936, 49 Stat. 2036, *et seq.* (41 U.S.C. 35, *et seq.*), as amended by the Fulbright Amendment of June 30, 1952, 66 Stat. 308 (41 U.S.C. 43a), are printed in the petition for a writ of certiorari (Pet. 4-6).

STATEMENT

The questions presented by the petition are identical to those presented by petitioners in their prior petition for a writ of certiorari, filed on February 11, 1956, which was denied March 26, 1956; petition for rehearing denied May 14, 1956 (*Covington Mills, Alabama Mills, Inc., et al.* v. *Mitchell*, 350 U.S. 1002; 351 U.S. 934). The present petition challenges the same decision of the Court of Appeals which the previous petition sought to have reviewed, and all of the petitioners here joined in that previous petition. There have been no changes in either the facts or the law relating to those questions since this Court's previous denial of the writ. For the significant facts bearing on the questions here again presented, we respectfully refer the Court to the Brief for Respondent Secretary of Labor in Opposition to the Petition filed in *Covington Mills, Alabama Mills, Inc., et al.* v. *Mitchell*, No. 682, October Term 1955.

Nothing has been added to the case since the previous denial of certiorari except the entry of judgment by the District Court, upon remand, in accordance with the explicit directions of the Court of Appeals. The directions were that "judgment should be entered for the defendant" against all plaintiffs "who are not dismissed." While the District Court was also instructed "to rule on the motion to dismiss, unless the government withdraws it or the plaintiffs concerned consent to it," this contingency was removed by the withdrawal of the motion to dismiss without objection, thus leaving the direction for entry

of judgment for the defendant unequivocal and final with respect to all of the remaining plaintiffs.

Accordingly, the District Court's judgment simply vacated its prior judgment, dismissed the complaint, and entered summary judgment for the defendants, retaining jurisdiction "for such other and further proceedings as may be proper." At the insistence of petitioners themselves, the judgment included no disposition of the questions of liability on petitioners' bonds, or otherwise, for underpayments of wages during the period the Secretary of Labor had been enjoined from enforcing his wage determination. Admittedly, therefore, nothing more was added to the record which had been before the Court of Appeals and before this Court on the previous appeal and the previous petition for certiorari.

Petitioners nevertheless filed an appeal from the District Court's judgment. Shortly after the docketing of this second appeal, the Secretary of Labor moved (on November 8, 1956) for disposition of the appeal without formal briefs or arguments, on the grounds that the Court of Appeals already had fully heard and decided the subject matter, and that the only purpose or effect of the second appeal was to obtain a rehearing of the issues previously adjudicated. Petitioners opposed this motion, and the court denied it. In addition, petitioners filed countermotions for postponement of the appeal and for hearing by the court *en banc*. Although these motions were ultimately denied, they resulted in delaying disposition of the appeal until April 26, 1957, when the Court of Appeals, by *per curiam* opinion, simply

reaffirmed its decision on the prior appeal (Pet. App. 1a).

Since the present petition for a writ of certiorari was not filed until July 24, 1957 (*i.e.*, after the adjournment of the 1956 term of this Court), well over a year has now already elapsed since the denial of petitioners' previous petition for certiorari. Thus, this litigation over the basic issue of the Secretary's statutory authority has now extended to more than 4½ years. Meanwhile, petitioners have not paid their employees an estimated total of over $400,000 which, but for this litigation, would have been due under the wage determination which by its terms became effective February 21, 1953. (see Pet. 21).

ARGUMENT

Petitioners' present application for a writ of certiorari, is, in effect, no more than another petition for rehearing of this Court's previous denial of the writ and also of rehearing, and therefore should be denied as out of time and inconsistent with Rule 58(2) and (4) of this Court. But even if the present petition is not untimely, the reasons and considerations for denying the previous petition, filed by these same petitioners in this same case, apply with even greater force to the present petition.

1. As is evident from the proceedings and disposition of the second appeal of this case, the second appeal brought up nothing but the same questions fully heard and adjudicated on the first appeal, and was no more than an effort to relitigate those same issues.

Admittedly, there have been no intervening changes in either the facts or the law relating to the issues previously adjudicated.

Petitioners' sole justification for the present reapplication is the purely speculative assumption that the only reason for this Court's previous denial of certiorari was a supposed "lack of finality" in the status of the case with respect to some of the petitioners—those against whom a motion to dismiss for lack of standing to sue was pending. This tenuous speculation, which has already served as an excuse for the prolonged relitigation attempted on the second appeal, ignores the fact that this Court also denied the petition *for rehearing* which had specifically called attention to the finality of the judgment as to the 14 petitioners against whom no such jurisdictional objection was pending, and, in addition, denied the petition for certiorari in the *Allendale* case (*The Allendale Co. et al.* v. *James P. Mitchell*, 351 U.S. 909), which presented the identical questions of statutory construction in the absence of any jurisdictional issue with respect to *any* of the petitioners.

Petitioners do not deny that the judgment which was the subject of the previous petition had finality with respect to those plaintiffs against whom no motion to dismiss for lack of standing to sue was pending at that time. Thus, undeniably, at least some of the present petitioners are now seeking nothing more than a rehearing of the previous denial. We submit that *all* of the petitioners are in this same position, since the prior judgment, for all practical purposes, was equally final, albeit on alternative grounds, as to

all of them. The prior adjudication was unmistakably the final "law of the case" as to all on the sole question presented by the prior and the present petitions, *i.e.*, the statutory authority of the Secretary of Labor to determine an industry-wide prevailing minimum wage for the textile industry. Petitioners themselves recognized this at the time of their previous petition, and neither the Secretary of Labor nor the intervenors, in opposing that petition, claimed any lack of finality as to any of the petitioners.

The present petition plainly does not meet the requirements respecting time or other conditions prescribed for petitions for rehearing in Rule 58(2) and (4) of this Court. No intervening decision of this Court or of any other court, nor any new legislative action, has created a conflict warranting review. On the contrary, the decision of the Court of Appeals which petitioners previously sought to have reviewed has not only now been reaffirmed by that Court, but has been consistently followed by the district courts in litigation involving other wage determinations. *Allendale Co. et al.* v. *Mitchell*, decided February 7, 1956, not officially reported, but printed in 12 WH Cases 760, certiorari denied, 351 U.S. 909; *Ruth Elkhorn Coals* v. *Mitchell* and *Central Pennsylvania Open-Pit Mining Ass'n.* v. *Mitchell*, Civ. Nos. 5052-55 and 4962-55, decided May 23, 1956, not officially reported; *Consolidated Electric Lamp Co. et al.* v. *Mitchell*, Civ. No. 4143-56, decided June 3, 1957, not officially reported, but printed in 32 Labor Cases (CCH), Par. 70, 747.

2. Even if the petition were otherwise timely and appropriate, the reasons and considerations advanced

in opposition to the previous petition apply, *a fortiori*, to the present one. This Court has already three times denied petitions for review of the identical question of statutory construction presented by this petition (having denied both the petitions for a writ and for rehearing filed by the present petitioners in No. 682, October Term 1955, *Covington Mills, Alabama Mills, Inc., et al.* v. *James P. Mitchell*, 350 U.S. 1002; 351 U.S. 934; as well as the petition for a writ in No. 755, October Term 1955, *The Allendale Co. et al.* v. *James P. Mitchell*, 351 U.S. 909).

The present petition brings forward no reasons in support of certiorari other than those fully presented on the previous petitions filed by these same petitioners in *Covington Mills, Alabama Mills* and on the petition in *Allendale*. We respectfully refer the Court to the briefs for the Secretary of Labor in opposition to those petitions (particularly the Brief in Opposition in No. 682, October Term 1955, in *Covington*) instead of repeating the considerations there detailed. All factors and considerations pertinent to the question of statutory construction presented by the instant petition were fairly and adequately presented by the records submitted with those petitions.

The adherence by the Court of Appeals to its prior adjudication was clearly dictated by the considerations of "orderly judicial action," which forbid "the relitigation of matters or issues previously determined on a former review," "except in unusual circumstances" (*Insurance Group Committee* v. *D. & R. G. W. R. Co.*, 329 U.S. 607, 612), and require that litigants not be permitted "by repeated appeals" to

"speculate on chances for changes" in the membership of the court (see *United States* v. *Carmen*, 184 U.S. 372, 374). These same considerations of "orderly judicial action" are implicit in the rules of this Court on petitions for rehearing (Rule 58), and, in the circumstances of this unduly prolonged litigation, call for denial of the present petition.

Not only are there no "unusual circumstances" which now would warrant granting the writ which was previously denied, but the intervening circumstances have only further corroborated the grounds for denial. The Government opposed the previous petitions for certiorari on the grounds that, although the question involved was unquestionably one of national importance, the decision of the Court of Appeals upholding the long-standing administrative practice under the Public Contracts Act was so clearly correct that review was neither necessary nor advisable, as important public interests required the most expeditious possible termination of this litigation which had then already consumed more than three years. During the additional year and a half that has now elapsed since the previous denial, widespread reliance has been placed upon the decision of the Court of Appeals, by the Secretary of Labor (who has made similar industry-wide wage determinations for about 40 other industries since the denial of the earlier petitions, 21 F.R. 5444, 6750, 3315; 22 F.R. 3011), by the lower courts in other cases (see the decisions cited *supra*, p. 7), and by employers and employees and government agencies subject to wage determinations made for other industries. Indeed,

wage settlements have been made on the basis of that decision by many of the litigants who were parties to the previously denied petitions, the companion *Covington Mills* case and the *Allendale* case having been thus settled without further court proceedings.

Since no intervening conflict with the decision has developed, either judicially or by legislative action, and there have been no other circumstances contravening that ruling, the soundness of the decision below, in adhering to the long-standing administrative interpretation, is even less open to question now. And, plainly, a prompt end to this relitigation is increasingly important to the public interests involved.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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